



Oak House,
Sutton Quays Business Park,
Clifton Road,
Sutton Weaver,
WA7 3EH

AQUEOUS CONSULTING LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES



Brandsmiths
Chancery Place
50 Brown Street
Manchester
M2 2JG

www.brandsmiths.co.uk

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

Acceptance Date: the date on which the Website passes the Acceptance Tests in accordance with paragraph 2.7 of Part 1 of Schedule 1.

Acceptance Tests: the tests of the Website to be carried out after installation, as set out in the Project Plan.

Charges: the charges for the Services, as set out in the Order and payable in accordance with clause 7.

Commencement Date: has the meaning given to it in clause 2.2.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these terms and conditions.

Critical Fault: a reproducible fault which entirely prevents the Customer from using a material part of the functionality of the Website.

Customer: the person, firm or company who purchases Services from the Supplier.

Data Protection Legislation: all applicable data protection law and regulations in force from time to time in the UK, including (when in force):

- (i) The Data Protection Act 1998;
- (ii) the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and/or
- (iii) any successor legislation to the GDPR or the Data Protection Act 1998.

Deliverables: the deliverables produced by the Supplier and provided to the Customer in the course of carrying out the Services.

Hosting Services: any hosting services to be provided by the Supplier as set out in the Project Plan or the Order.

Initial Term: the initial term as set out in the Order, if included.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade 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 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.

Maintenance Release: a release of the Website which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Materials: any and all content provided by the Customer to the Supplier from time to time for incorporation in the Website or otherwise connected with the provision of the Services.

New Version: a new version of the Website released by the Supplier after the Acceptance Date which provides additional or improved functionality or performance.

Non-Critical Fault: any reproducible fault in the Website other than a Critical Fault.

Normal Working Hours: the hours 9.00am to 5.00pm GMT, Monday to Friday, except English Bank Holidays.

Order: the Customer's order for the supply of the Services, including the Project Plan.

Personal Data: has the meaning set out in the Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Customer is the data controller and in relation to which the Supplier is providing Services under the Contract.

Project Plan: the description or specification of the Services in writing as agreed and amended by the parties in accordance with the terms of this Agreement from time to time.

Project Price: the total Charges for the Services as set out in the Project Plan when working on a fixed price basis.

Project Stage: an interval by which specified part of the Services are to be completed, as set out in the Project Plan.

SEO Services: any search engine optimisation services to be provided by the Supplier as set out in the Project Plan or the Order.

Services: the services to be provided by the Supplier under the Contract, as detailed in the Order and/or the Project Plan and as amended from time to time by agreement between the parties in writing, such Services may include:

- (a) consultancy services;
- (b) SEO Services;
- (c) web design and development;
- (d) pay-per-click management services;
- (e) social media management services;
- (f) reputation management services;
- (g) Hosting Services;
- (h) Support Services;
- (i) copywriting services; and
- (j) any other services provided by the Supplier from time to time.

Services Term: the term for the provision of each type of the Services, if different to the , as set out in the Order.

Supplier: Aqueous Consulting Limited, with company number 5604273 whose registered office is at, 8 Eastway, Sale, Cheshire, England, M33 4DX.

Support Services: any website support services to be provided by the Supplier as set out in the Project Plan or the Order.

Unsuitable Content: any material that is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party's Intellectual Property Rights.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

Website: any website which is designed, developed and/or hosted by the Supplier as part of the Services.

Website Development Services: any website development services to be provided by the Supplier as set out in the Project Plan or the Order.

Working Days: a day (other than a Saturday or a Sunday) or which commercial banks are open for general business in London.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes faxes and e-mail.
- 1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

2 Application of Conditions

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These conditions shall:
 - (a) apply to and be incorporated in the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.4 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Working Days from its date of issue.

3 Commencement and Duration

- 3.1 The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 12, for the Initial Term and shall automatically extend for a further period of 12 months (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term.
- 3.2 Subject to the earlier termination of the Contract as a whole, the Supplier shall provide each type of the Services to the Customer in accordance with the Services Term relating to that type of Services. If no specific Services Term is set out in the Order for a type of Services, then the type of Services shall be provided for the duration of the Contract.
- 3.3 The Supplier may give written notice to the Customer not later than 30 days before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 3.4 The Customer may give written notice to the Supplier not later than three months before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

4 Supplier's Obligations

- 4.1 The Supplier shall use reasonable endeavours to provide the Services, and deliver the Deliverables to the Customer, in accordance in all material respects with the Project Plan.
- 4.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and are not guaranteed.
- 4.3 The Supplier reserves the right to amend the Project Plan or the Services 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 Customer in any such event.
- 4.4 The Supplier gives no warranty that use of the Website will be uninterrupted, error or virus free. Websites, by their very nature, are susceptible to errors and viruses
- 4.5 The Supplier warrants to the Customer that:
- (a) the Services will be provided using reasonable care and skill; and
 - (b) the Website will comply with any specification set out in the Project Plan for a period of one month from the Acceptance Date.

5 Customer Obligations

- 5.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Project Plan are complete and accurate;
- (b) comply with any obligations on the Customer which are set out in the Project Plan;
- (c) co-operate with the Supplier in all matters relating to the Services;
- (d) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
- (e) provide in a timely manner such information, images and content as the Supplier may request, and ensure that such information, images and content are accurate in all material respects; and
- (f) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services;
- (g) keep all passwords and user access credentials secure;
- (h) encrypt any data the Customer uploads to the Website or transmits over the internet; and
- (i) obtain and maintain insurance cover in respect of any loss or damage to data stored on the Website.

5.2 The Customer shall not, without the Supplier's prior written approval, allow any person other than a representative of the Supplier to modify, repair or maintain any part of the Website.

5.3 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer 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 Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer 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 Customer arising directly or indirectly from the Supplier's failure to perform or delay in performing any of its obligations as set out in this clause 5.3; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5.4 The Customer is responsible for configuring and implementing its own information technology and computer systems, as well as its own anti-virus software, to ensure the security of the Website and to prevent any hack or other security breach relating to the Website and the Services.

- 5.5 The Supplier shall not be liable for any loss or damage suffered by the Customer (including any loss of the Website or any data) arising as a result of any hack or other security breach relating to the Website or the Services by a third party, including where the Services include Hosting Services.
- 5.6 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.
- 5.7 Any consent given by the Supplier in accordance with clause 5.4 shall be subject to the Customer paying to the Supplier a sum equivalent to 50% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 50% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

6 Website Content

- 6.1 The Customer shall ensure that the Materials:
- (a) do not infringe any applicable laws, regulations or third-party rights (including Intellectual Property Rights);
 - (b) are accurate and complete in all material respects; and
 - (c) do not contain any Unsuitable Content.
- 6.2 The Supplier shall be under no obligation to monitor the content on the Website.
- 6.3 The Customer acknowledges that the Supplier has no control over any content placed on the Website by the Customer or by visitors to the Website, or which the Supplier places on the Website at the Customer's request and shall have no liability for any such content.
- 6.4 The Supplier reserves the right to remove content from the Website, and the Customer shall promptly remove content from the Website when requested to do so, if the Supplier reasonably suspects such content is Unsuitable Content.
- 6.5 The Customer shall indemnify the Supplier against all costs, claims, damages or expenses incurred by the Supplier arising as a result of any action or claim that the Materials or any other content provided by the Customer contain Unsuitable Content or infringe the Intellectual Property Rights of any third party.

7 Charges and Payment

- 7.1 Payment of the Charges shall be made in accordance with the Order and in the manner set out in this clause 7. For the avoidance of doubt, any Charges payable by a Customer shall be paid by direct debit in advance unless agreed otherwise in advance by the parties.
- 7.2 Where the Charges are calculated on a fixed price basis:
- (a) the amount payable shall be set out in the Project Plan and the total amount of those Charges shall be referred to as the Project Price in these terms and conditions;

- (b) the Supplier may invoice the Customer for payments on account of the Project Price in advance of the Supplier commencing each Project Stage and, for the avoidance of doubt, payment by the Customer of such an invoice shall not be in full and final satisfaction of the Project Price; and
- (c) at the Commencement Date the Customer is liable to the Supplier for the Project Price in full, without any deduction or set-off.

7.3 The Supplier shall be entitled to charge the Customer for:

- (a) any expenses reasonably incurred and agreed in advance with the Customer, including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses; and
- (b) the cost to the Supplier of any materials and/or services procured by the Supplier from third parties and required by the Supplier for the performance of the Services,

as such items and their cost are set out in the Project Plan and/or approved by the Customer in advance from time to time.

7.4 The Customer shall pay each invoice 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.

7.5 Where the Charges are calculated on a time and materials basis:

- (a) the Supplier's standard hourly rates for each individual person shall be set out in the Project Plan; and
- (b) the Supplier shall invoice the Customer at the end of each month for Services performed during that month, provided always that the Supplier may, at its absolute discretion, invoice the Customer for payments on account.

7.6 Time for payment of any amount shall be of the essence of the Contract.

7.7 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

7.8 The Client shall be under no obligation to commence the provision of any Services unless and until it has received payment of the first instalment of the Charges.

7.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer 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.

7.10 If the Customer does not provide any payment on account as requested by the Supplier, the Supplier may refuse to provide the Services until such payment on account is received in full.

- 7.11 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 12:
- (a) the Supplier shall be entitled to immediately suspend performance of the Services; and
 - (b) the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.12 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 7.13 The Supplier reserves the right to increase the Charges, provided that these cannot be increased more than once in any 12-month period. The Supplier will give the Customer written notice of any such increase at least 28 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 2 weeks of the date of the Supplier's notice and the Supplier shall have the right, without limiting its other rights or remedies, to terminate the Contract by giving 1 weeks' written notice to the Customer.

8 Intellectual Property Rights

- 8.1 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 Customer), including Intellectual Property Rights subsisting in the Deliverables and the Website, shall be owned by the Supplier or its licensors (other than Intellectual Property Rights subsisting in open source software).
- 8.2 The Customer acquires no rights in or to the Website or the Deliverables other than those expressly granted by this agreement.
- 8.3 Subject to payment of the Charges in full by the Customer, the Supplier hereby grants to the Customer a non-exclusive, royalty-free, revocable, non-transferable, worldwide licence to use all Intellectual Property Rights subsisting in the Deliverables and the Website to such extent as is necessary to enable the Customer to make reasonable use of the Website, the Deliverables and the Services as is envisaged by the parties. For the avoidance of doubt, this licence shall not commence until the Customer has paid the Charges to the Supplier in full.
- 8.4 The Customer shall use reasonable endeavours to prevent any infringement of the Intellectual Property Rights in the Website and the Deliverables and shall promptly report to the Supplier any such infringement that comes to the Customer's attention.
- 8.5 The Customer acknowledges that the Customer's use of any Materials is conditional on the Supplier obtaining a written end-user Licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

8.6 The Customer shall indemnify the Supplier against all costs, damages, losses and expenses arising as a result of any action or claim that the Materials infringe any Intellectual Property Rights of a third party.

8.7 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, irrevocable licence to use all Intellectual Property Rights subsisting in the Materials for the purposes of the Supplier performing its obligations pursuant to the Contract.

9 Confidentiality

9.1 The Customer undertakes that it shall not at any time, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Supplier (including technical information, specifications, inventions and processes) (**Confidential Information**) except as permitted by clause 9.2.

9.2 The Customer may disclose the Supplier's confidential information:

(a) 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; and

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

9.3 The Customer shall not use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

9.4 This clause 9 shall survive termination of the Contract, however arising.

10 Data Protection

10.1 The Customer and the Supplier acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor in respect of any Personal Data.

10.2 The Supplier shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.

10.3 The Supplier warrants that, having regard to the state of technological development and the costs of implementing any measures, it will:

(a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

(i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

(ii) the nature of the data to be protected; and

(b) take reasonable steps to ensure compliance with those measures.

10.4 The Customer acknowledges that the Supplier is reliant on the Customer 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 Customer's instructions, and the Customer shall indemnify the Supplier against all costs, claims, damages or expenses incurred by the Supplier arising as a result of such instructions.

11 Limitation of Liability

11.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract howsoever arising;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

11.4 Subject to clause 11.3:

- (a) the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of actual or anticipated profits;
 - (ii) loss of actual or anticipated revenue;
 - (iii) loss of business;
 - (iv) depletion of goodwill or similar losses;
 - (v) loss of opportunity;
 - (vi) loss of the use of money;
 - (vii) loss of anticipated savings;
 - (viii) loss of goods;

- (ix) loss of contract;
 - (x) loss of use;
 - (xi) loss or corruption of data or information;
 - (xii) loss of reputation; or
 - (xiii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 50% of the Charges received by the Supplier from the Customer under the Contract in the previous six months.

12. Termination

12.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract immediately on giving notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) 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;
- (d) 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
- (e) the other party takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt.

12.2 Without prejudice to any other rights or remedies to which the Supplier may be entitled, the Supplier may terminate the Contract immediately on giving notice to the Customer if:

- (a) there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Customer; or
 - (b) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.3 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 12.4 On termination of this agreement for any reason, the Customer shall as soon as reasonably practicable:
 - (a) return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the Supplier containing, reflecting, incorporating or based on Confidential Information belonging to the Supplier; and
 - (b) if it has not yet paid the Charges in full, permanently delete any Website belonging to the Supplier from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the Supplier.
- 12.5 On termination of this agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier and any fees due to any third parties. The Supplier shall submit invoices for any Services that they have supplied and/or third party services that they have paid for, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

13. Force Majeure

The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service (including the internet) or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

14. General

14.1 Waiver

- (a) A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.2 Severance

- (a) If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- (b) If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

14.3 Entire Agreement

- (a) Each of the parties acknowledges and agrees that in entering into the Contract and the documents referred to in it or annexed to it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty (Representation) (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in the Contract or those documents.
- (b) Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

14.4 Assignment

- (a) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.5 No Partnership or Agency. Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of

any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

14.6 Third Party Rights. The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

14.7 Notices

(a) Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Contract.

(b) A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

15. Governing Law and Jurisdiction

15.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

15.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including without limitation non-contractual disputes or claims).

Schedule 1

Part 1: Hosting, Website Design and Development

NB: The Definitions contained in clause 1.1 of the Contract will apply to these Schedules.

1. Hosting Services

- 1.1 This paragraph 1 shall apply to the extent that the Services include Hosting Services.
- 1.2 The hosting of any Website platform will be within the Supplier's dedicated hosting solution. The Supplier's hosting includes the following features:
- (a) 99% network uptime service level;
 - (b) 99% power availability;
 - (c) 24/7/365 server monitoring; and
 - (d) weekly backups on a one week retention.
- 1.3 The Website and the data contained within the associated database will be backed up as follows:
- (a) weekly incremental; and
 - (b) 2-week retention.
- 1.4 If the Customer wishes to cancel the Hosting Services, they shall notify the Supplier at least 30 days before the term is due to be renewed. The Supplier will not be liable for any costs incurred by the Customer if they choose to move to an alternative host supplier. The Customer will be liable for any time incurred by the Supplier for helping with the move away from their server.
- 1.5 Web hosting companies occasionally implement changes on servers which may require minor adjustments to the Customer's website code by the Supplier. Rare "down time" or other problems which require the Supplier's assistance may also occur. These changes may, at the Supplier's discretion, be charged at their hourly rate of £95.00

2. Development and Acceptance of Website

- 2.1 This paragraph 2 shall apply to the extent that the Services include Website Development Services.
- 2.2 The Website created and provided by the Supplier are designed to work in the current version, and the version released immediately prior to the current version, of the most widely used browsers. The Supplier does not guarantee the site working in all browsers and does not guarantee that the site will work in any versions that are not the current version or the version released immediately prior to the current version.
- 2.3 Once the Supplier has completed the design and development of the Website they will carry out the Acceptance Tests. The procedures set out in this paragraph shall be repeated on any further development works agreed between the parties from time to time.
- 2.4 The Acceptance Tests shall test compliance of the Website with the Project Plan. The form and detail of such Acceptance Tests is set out in the Project Plan.

- 2.5 Acceptance of the Website shall occur when the Website has passed the Acceptance Tests. The Supplier shall notify the Customer when the Acceptance Tests have been passed and provide the results of the tests to the Customer in writing.
- 2.6 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom the Suppliers have no responsibility (**Non-Supplier Defect**), the Website shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. The Supplier shall provide assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products. The Customer shall pay the Supplier in full for all such additional services and products at the Supplier's then current fees and prices.
- 2.7 Acceptance of the Website shall also be deemed to have taken place upon the occurrence of any of the following events:
- (a) the Website passes the Acceptance Tests;
 - (b) the Customer uses any part of the Website for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
 - (c) the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of seven Working Days from the date on which the Supplier is ready to commence running such Acceptance Tests or retests,
- (Acceptance Date).**

Part 2 Maintenance and Support

This Part 2 shall apply to the extent that the Services include Support Services.

1. Supported Website

- 1.1 If requested by the Customer, and if the Supplier agrees, the Supplier will provide support and maintenance in respect of the Website, subject to payment of the Charges and hours of work required.
- 1.2 In relation to Maintenance Releases:
- (a) as part of the Support Services and subject always to paragraph 1.5 below, the Supplier shall from time to time make Maintenance Releases available to the Customer without charge at the Supplier's discretion; and
 - (b) if the Customer fails to make arrangements for the installation of a Maintenance Release within one month of the Supplier notifying the Customer that such Maintenance Release is available for installation, the Supplier may terminate the Contract by giving one month's written notice to the Customer.
- 1.3 In relation to New Versions, if the Supplier releases a New Version and the Customer decides not to acquire and install such New Version, that decision shall not give rise to any immediate right to terminate the Contract, nor shall it result in any adverse effect on the Services or the performance of the Supplier's obligations under the Contract. However, if the Supplier or a third party have released a New Version since the version which forms part of the Website, and the Customer has not, within 12 months of the Supplier having notified them that a New Version is available, acquired and installed

that New Version, the Supplier may terminate the Contract by giving one month's written notice to the Customer given at any time after the expiry of such period. Pending any such termination the Supplier's obligations in respect of the Website shall be reduced accordingly to an amount agreed between the parties.

- 1.4 The price of the New Version shall be agreed in writing between the parties prior to installation.
- 1.5 Where a Maintenance Release requires the Supplier to make payment to a third party, the Supplier shall be entitled to charge the Customer for the cost to it of acquiring and installing such Maintenance Release.

2. Support Services

- 2.1 Support Services shall be provided during Normal Working Hours and shall comprise the Support Services set out in the Project Plan, which may include one or more of the following:
 - (a) a telephone help desk to provide first-line technical support to users of the Website;
 - (b) remote diagnosis and, where possible, correction of faults using the Website management system; and
 - (c) proactive suggestions for improvements;
 - (d) application integrity checking:
 - (i) hosting environment configurations;
 - (ii) content implementation/page creation;
 - (iii) bug fixes/amendments;
 - (iv) compatibility/insert Open Source Software used updates;
 - (v) web development;
 - (vi) additional training.
- 2.2 The following Services shall not be included in the Support Services:
 - (a) software upgrades for any open source software used;
 - (b) development time used over and above the agreed number of hours set out within the Project Plan; and
 - (c) application migration.
- 2.3 Where a Non-Critical Fault is to be corrected in a forthcoming Maintenance Release, then for a reasonable period before the issue of such Maintenance Release the Supplier may decline to provide assistance in respect of that Non-Critical Fault.

- 2.4 If additional on-site support is required in any month it may be provided by the Supplier at the Supplier's option at the rates set out in the Project Plan or in accordance with the Supplier's standard rates in force from time to time.
- 2.5 The Supplier shall have no obligation to provide the Support Services where faults arise from:
- (a) misuse, incorrect use of or damage to the Website from whatever cause (other than any act or omission of the Supplier's), including failure or fluctuation of electrical power;
 - (b) failure to maintain the necessary environmental conditions for use of the Website;
 - (c) use of the Website in combination with any equipment or Website not provided by the Supplier or not designated by the Supplier for use with any Modification forming part of the Website, or any fault in any such equipment or Website;
 - (d) relocation or installation of the Website by any person other than the Supplier or a person acting under the Supplier's instructions;
 - (e) any breach of the Customer's obligations under this agreement or having the Website maintained by a third party;
 - (f) any Modification not authorised by the Supplier resulting in a departure from the Project Plan; or
 - (g) operator error.
- 2.6 The Supplier shall use reasonable endeavours to correct defects notified to them by the Customer in a timely manner appropriate to the seriousness of the circumstances and in accordance with the following procedure:
- (a) the Customer shall promptly notify the Supplier of all defects. Where such notification is made orally, the Customer shall provide written confirmation (which may be sent by fax or by e-mail) of the notification within two Working Days;
 - (b) the Supplier shall acknowledge receipt of the notification and shall determine, in consultation with the Customer, how seriously the defect affects their operations;
 - (c) if a notified defect halts or substantially impairs the Customer's operations which use the Website, the Supplier shall:
 - (i) start work on correcting the defect within four Working Hours of receipt of such notification;
 - (ii) use reasonable efforts to correct the defect as soon as possible; and
 - (iii) keep the Customer informed of progress towards correction of the defect.
 - (d) if a notified defect, while not halting or substantially impairing the Customer's operations, causes those operations to become significantly slowed or causes substantial inconvenience, the Supplier shall commence work on correcting the defect within 48 hours of receipt of such notification and shall use reasonable efforts to correct the defect as soon as possible; and

(e) in the case of defects other than those specified in paragraph 2.6(c) and paragraph 2.6(d), the Supplier shall start work on correcting the defect as soon as their workload allows and shall use commercially reasonable efforts to correct the defect.

2.7 The Supplier shall use reasonable efforts to ensure the accurate migration of any data, but gives no warranties as to the completeness or accuracy of such migration. You shall be responsible for checking the accuracy and completeness of the migrated data and shall promptly give sufficient details.

3. Site Content

3.1 Supplier shall update the Website with the Materials provided from time to time by the Customer but no more than once in any month during the term of the Contract.

3.2 The Supplier may include an image, brand logo and/or links in a follow or no follow format to any of its own websites on the Website at the Supplier's discretion.

3.3 The Supplier shall not be liable for the expiration or invalidity of any Website assets.

3.4 For the purposes of paragraph 3.3 above, Website assets are those aspects of the Website which are outside of the Supplier's control. They shall include security certificates, domain names, web email, contracts with third party providers (e.g. finance modules), hosting agreements between the Customer and a third party, and any contractual arrangements between the Customer and a third party.

4. Domain Names

4.1 When instructed to do so the Supplier will register the domain name for the Website they have created.

4.2 The Customer acknowledges that the contract for any domain name registered will be between the Customer and the relevant third party, and the Supplier will act as the Customer's agent in entering into such contract on the Customer's behalf.

4.3 The Supplier does not guarantee that they will be able to register any specifically requested domain name.

4.4 The Supplier does not give any warranty that the domain name the Customer has requested the Supplier to register will not infringe any third party rights (including Intellectual Property Rights).

4.5 The Customer is responsible for all costs incurred in registering a domain name for them, this will include a management and handling fee payable to the Supplier and any fees payable to the registration company.

4.6 The Customer shall be responsible for monitoring and maintaining any domain name registration.

5. Website Availability

5.1 The Supplier shall use reasonable endeavours to provide 99% service availability as set out in the Project Plan, but will have no liability for any downtime caused by:

(a) the Customer's act or omission or that of their agents;

- (b) the Customer's computer hardware;
- (c) any failure by the Customer to comply with the terms of the Contract;
- (d) a force majeure event, as defined in the Contract;
- (e) domain name server issues outside the Supplier's control; or
- (f) acts or omissions of third party providers.

5.2 Network downtime is measured from the time a trouble ticket is opened by the Customer to the time the server can receive and transmit data.

5.3 The Supplier reserves the right to take the Website off-line to update it or fix problems at any time and will use reasonable endeavours to provide the Customer with advance notice of any such update.

Schedule 2

PART 1 SEO and Digital Marketing Services

This Part 1 shall apply to the extent that the Services include SEO Services.

1. Services

- 1.1 The Customer acknowledges and agrees that the Supplier does not guarantee first position or consistent top ten positions for any particular keyword, phrase or search term, as it is solely at the discretion of the search engines themselves to list a Website.
- 1.2 The Customer acknowledges that the Supplier has no control over the policies of search engines with respect to the type of websites and/or content that they accept or the way in which websites are ranked either now or in the future. As a result search engines may:
 - (a) stop accepting submissions from the Supplier for an indefinite period of time with or without notice;
 - (b) change criteria for listing of searches at any time;
 - (b) cease to list a website at its discretion, however should a website not reappear within thirty (30) days of it not being listed then the Supplier will re-optimize the applicable website based on the current policies of the relevant search engine at a cost to be agreed between the Customer and the Supplier, and the Supplier shall not be liable to the Customer for any such actions of search engines.
- 1.3 The Supplier is not responsible for any impacts on the SEO Services which are caused by changes made to the Website by:
 - (a) other parties; or
 - (b) the Customer in choosing to link to or obtain a link from a particular website without prior consultation with the Supplier, that adversely affects the search engine rankings of the website.

2. SEO Campaign Content

- 2.1 The Supplier shall include in the SEO campaign any Materials and any other content developed pursuant to the Project Plan.
- 2.2 In order to provide the Customer with the SEO Services:
 - (a) the Supplier and the Customer will agree a scope of work to be undertaken including but not limited to the keywords which are to be targeted, the pages which are to be optimized, the content which needs to be written, the specific Website or Websites on which the service is to be performed and any limitations that the Customer needs to notify the Supplier of including any legal restraints or restrictions.
 - (b) the Supplier shall be entitled to amend the Project Plan or scope of work at any time should the Supplier consider that the original Project Plan is unlikely to succeed in relation to the SEO Services. This will be subject to written confirmation from the Customer.

3. Customer Obligations

- 3.1 For the purposes of the Supplier providing the SEO Services, the Customer shall provide the Supplier with:
- (a) administrative or back-end access to the Website for analysis of its content and structure;
 - (b) permission for the Supplier to make changes to the Website for the purpose of optimisation;
 - (c) permission for the Supplier to communicate directly with any applicable third parties connected with the Website (for example, the Customer's web designer) in order to provide the Services;
 - (d) access to existing traffic statistics for the Website in order for analysis and tracking purposes; and
 - (e) where the Website is lacking in textual content, the Customer will provide additional text content in electronic format for the purpose of creating additional or richer web pages, the Customer shall be responsible for ensuring such content is accurate and complete in all respects.

PART 2 Digital Marketing Services

1 Pay Per Click Campaign Management

- 1.1 This paragraph 1 shall apply to the extent that the Services include pay per click (**PPC**) management.
- 1.2 The Supplier will manage the PPC campaign with the aim of achieving the goals set out in the Project Plan.
- 1.3 Due to external factors, including the way advertising platforms rank advertisements, the Supplier cannot offer any form of guarantee regarding performance or return on investment. Nor can the Supplier offer any form of guarantee on the performance of the PPC campaign as a whole or in part.
- 1.4 The Supplier cannot accept liability for any change in advertisements, or drop off in the impressions or clicks due to external factors, including those set out in paragraph 1.3 above.
- 1.5 The Supplier shall use reasonable endeavours to ensure that the Customer's budget for a PPC campaign is complied with, however the Supplier cannot exercise absolute control on the level of PPC engagement from internet users and therefore gives no guarantee that any budget for spend on a PPC campaign will be complied with.

2 Social Media Management

- 2.1 This paragraph 2 shall apply to the extent that the Services include social media management.
- 2.2 All Social Media Management Services will be detailed in the Project Plan. The tasks assigned and quote given for any such Services will be based on the brief submitted.

- 2.3 The Supplier provides no guarantees as to the Return on Investment to be gained for the Customer.
- 2.4 The Supplier will not be liable to the Customer for any content shared with the public on the Customer's social media profiles.