

Terms & Conditions Of Business

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These Terms and Conditions shall apply to all business dealings between the Supplier and the Customer

1 Definitions

In any agreement based on these terms and conditions of business, unless the context otherwise requires:

- 1.1 'acceptance' means acceptance of the Web Pages by the Customer pursuant to paragraph 5;
- 1.2 'additional services' means the services to be performed by the Supplier pursuant to paragraph 3 consisting of services other than website support;
- 1.3 'an affiliate' means in relation to any company:
 - 1.3.1 any subsidiary or holding company of that company or any subsidiary of the holding company; or
 - 1.3.2 any other entity controlling or controlled by the company;
- 1.4 'the Agreement' means any agreement incorporating these Terms and Conditions
- 1.5 'the Background Content' means the screen templates and background layouts and any other background content supplied to the Customer by the Supplier (if any) under the Development Agreement as modified by the Supplier from time to time;
- 1.6 'a business day' means a day (excluding Saturdays) on which banks generally are open in the City of London for the transaction of normal banking business (other than solely for trading and settlement in euros);
- 1.7 'the Charges' means the charges to be paid by the Customer for the Services
- 1.8 'confidential information' means all business, technical, financial or other information created or exchanged between the parties
- 1.9 'the Content' means all text, graphics, logos, photographs, images, moving images, sound, illustrations and other materials featured, displayed or used or to be featured, displayed or used in or in relation to the Web Pages;
- 1.10 'the Contact Details' means the contact details for the parties including postal address, fax number and email address, and the names of the parties' respective representatives specified in the schedule;

the Customer' means the customer who contracts or purports to enter into an agreement with the Supplier;
- 1.12 'the Customer Content' means the Content provided to the Supplier by the Customer for use as part of the Web Pages in accordance with this agreement;
- 1.13 'the Customer Software' means the software used in the Website owned by the Customer, or licensed to him by a third party or the Supplier, but shall not include the Supplier Software;
- 1.14 'the Development Programme' means the timetable for the Project as set out in the agreement based on these Terms and Conditions;
- 1.15 'DNS' stands for domain name server;
- 1.16 'the Development Agreement' means the agreement between the Supplier and the Customer for the development and provision of software and technical architecture for the Supported Website;
- 1.17 'the Documentation' means the instruction manuals, user guides and other technical information in respect of the Supported Website operation previously provided or to be made available from time to time during the term of this agreement by the Supplier to the Customer in either printed or machine readable form at the Customer's discretion;
- 1.18 'the Effective Date' means the commencement date for any agreement incorporating these Terms and Conditions
- 1.19 'an enhancement' means any enhancement, amendment, modification or improvement to the Software or any part of it resulting in a function of the Software or any part of it being varied;
- 1.20 'an error' means any failure of the Software to conform in a significant material respect to the Documentation or to the Specification or, if such support is expressly taken by Customer further to the schedule, a graphical error or a navigational error provided that 'an error' excludes any such failure to conform to the extent that it results from any one or more of:
 - 1.20.1 the Customer's refusal to restore files or follow any other reasonable written (either hard copy or e-mail) recommendation by the Supplier;
 - 1.20.2 the use of any software program, package or file not specifically identified in the schedule;
 - 1.20.3 a malfunction of the equipment;
 - 1.20.4 any use of the Software outside the terms of the Development Agreement (so far as it provides for ongoing use); or
 - 1.20.5 any event or matter that is subject to the provision of the Additional Services or the Surcharge Services;
- 1.21 'an error correction' means the performance of a procedure, routine, modification or addition to the Software or (as the case may be) the Background Content that eliminates the adverse effect of an error without adversely affecting the functionality of the Software or (if relevant) the Background Content;
- 1.22 'the Expenses' means those amounts calculated pursuant to paragraph 3;
- 1.23 'the Extended Service Hours' means all hours outside the Service Hours;
- 1.24 'expert's decision' means a decision of an expert made in accordance with the procedures set out in paragraph 26;
- 1.25 'the Fees' means the Supplier's fees for the provision of the Services, including the Software Support;
- 1.26 'a graphical error' means a failure of the Background Content to graphically conform to the Specification when reproduced on screen as a result of the operation of the Software or any part;
- 1.27 'the Host Equipment' means the items and components of computer hardware, operating system and peripherals recommended by the Supplier for use in the operation of the Supported Website;
- 1.28 'intellectual property rights' means any and all patents, trade marks, rights in domain names, rights in designs, copyrights and database rights (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing) rights in confidential information and all other intellectual property rights of a similar or corresponding character which may subsist now or in the future in any part of the world; the Initial Term' means the initial term for the supply of the Services as specified in the Agreement for the Provision of Hosting Services;
- 1.30 'the Initial Period' means the initial term of any agreement based on these Terms and Conditions
- 1.31 'an IP address' stands for an internet protocol address;
- 1.32 'ISP' stands for internet service provider;
- 1.33 'the Migration Services' means the services described in paragraph 16.2;
- 1.34 'the Monthly Fee' means the fee payable monthly by the Customer as specified in the Agreement for the Provision of Hosting Services;
- 1.35 'a navigational error' means a failure of any hypertext elements of the Background Content to link or to allow data capture to occur in accordance with the Specification or the Documentation;
- 1.36 'new content' means content introduced to the Supported Website by the Customer or any third party;
- 'outage' means router package loss in excess of 50% sustained for more than 60 seconds;
- 1.38 'the Price' means the sums to be paid by the Customer to the Supplier as specified in the Agreement for the Supply of Web Pages in consideration of the provision of the Web Pages and in respect of the performance of the Project;
- 1.39 'the Project' means the production of the Web Pages and regular tool kit updates;
- 1.40 'the Project Co-ordinator' means the person for the time being duly appointed by the Customer to act as the Customer's principal representative for the purpose and supervision of the Project;
- 1.41 'the Project Manager' means the person for the time being duly appointed by the Supplier to act as the Supplier's principal representative for the purpose and supervision of the Project as set out in the Agreement for the Supply of Web Pages;
- 1.42 'the Project Team' means the personnel of the Supplier who may from time to time to carry out the Project listed in the Agreement for the Supply of Web Pages;
- 1.43 'a release' means updates to the Software identified by a release number (eg, Release 1.3), including error corrections and enhancements, which are distributed generally from time to time by the Supplier;
- 1.44 'a renewal period' has the meaning given in paragraph 12;
- 1.45 'the Service Co-ordinator' means the person for the time being duly appointed by the Customer to act as the Customer's principal representative for the purpose and supervision of the Services as set out in the Contact Details;

- 1.46 'the Service Manager' means the person for the time being duly appointed by the Supplier to act as the Supplier's principal representative for the purpose and supervision of the Services as set out in the Contact Details;
 - 1.47 'the Services' means all or any (as the context requires) of the services provided to the Customer by the Supplier as specified in the Order and any additional services, the Software Support and surcharge services;
 - 1.48 'the Service Hours' means the hours between 09.00 and 17.00 each business day;
 - 1.49 'the Site' means the address set out in the schedule at which the Software is operated on the Host Equipment and at which the Customer may direct the Supplier to provide on-site support under this agreement, or such other address as notified to the Supplier in writing at which the Customer may carry on business from time to time;
 - 1.50 'the Software' means:
 - 1.50.1 the Supplier's proprietary software programs in object code form identified by title and reference number, including any enhancements, adaptations, modifications, localisation and changes to them ('the Provider Software');
 - 1.50.2 the Third Party Software the Customer Software and the Supplier Software;
 - 1.51 'the Software Support' means the Supplier's obligations to support the Software pursuant to the Agreement for Software Support;
 - 1.52 'the Specification' means the description of the facilities and functions of the Software and (if relevant) the Background Content and for the Web Pages set out at or referred to in the Documentation or as expressly provided for under the Development Agreement's specification documents;
 - 1.53 'the Supplier' means Creative Marketing Environments Limited (Co Reg No 7256451) whose registered office is at Duston House Duston Northampton NN5 6JN United Kingdom
 - 1.54 'the Supplier Network' means that part of the Internet that is directly under the control of the Supplier;
 - 1.55 'the Supplier Software' means the software and related documentation owned by or licensed to the Supplier including any upgrades or related documentation, as specified in the Agreement for the Provision of Hosting Services;
 - 1.56 'the Supplier Scale' means the standard charges of the Supplier for labour;
 - 1.57 'the Supported Website' means the website developed and installed by the Supplier under the Development Agreement
 - 1.58 'the Support Line' means the telephone number or e-mail address set out in the schedule for the reporting of an error to the Supplier, which may be changed pursuant to paragraph Agreement for Software Support;
 - 1.59 'a support specialist' means an employee or agent of the Supplier who is qualified to effect a error correction or provide other support services under this agreement;
 - 1.60 'surcharge services' means the services to be performed by the Supplier pursuant to paragraph 3.6 of this agreement, comprising services not included in the Software Support;
 - 1.61 'the Terms of Payment' means the terms of payment of the Price, Fees or Charges;
 - 1.62 'the Third Party Software' means the third party software specified in object code form.
 - 1.63 'the Tool Kit' means the set of guidelines, rules, templates, pages, files, code and documentation provided by the Customer to enable the building of the Website and all of the Web Pages in accordance with the Specification in a consistent style, look and feel;
 - 1.64 'upgrades' includes all updates, upgrades, enhancements, corrections, modifications, new releases, new versions and bug fixes in object code form only from time to time issued or made available by the Supplier;
 - 1.65 'URL' stands for universal resource locator;
 - 1.66 'virus' means a computer program that copies itself or is copied to other storage media, including without limitation magnetic tape cassettes, memory chips, electronic cartridges, optical discs and magnetic discs, and destroys, alters or corrupts data, causes damage to the user's files or creates a nuisance or annoyance to the user and includes without limitation computer programs commonly referred to as 'worms' or 'trojan horses';
 - 1.67 'visitor' means a third party who has accessed the Website;
 - 1.68 'the Visitor Information' means the data collected by the Supplier about visitors and their behaviour when accessing the Website;
 - 1.69 'the Website Maintenance Services' means the services to be provided by the Supplier to the Customer in relation to the Website as detailed in the Order Form
 - 1.70 'the Web Pages' means the pages of the Website containing the Content described in the Specification and built using the Tool Kit; and
 - 1.71 'Agreement for the supply of Web Page' means any order for the supply of Web Pages made between the Customer and the Supplier
 - 1.72 'Agreement for the Provisions of Hosting Services' means any order for the provision of hosting services made between the Customer and the Supplier
 - 1.73 'Agreement for Software Support' means any order for the provision of software support made between the Customer and the Supplier
 - 1.74 'the Order' means any order for Services including the Provision of Hosting Services the supply of Website Services and Software Support
 - 1.75 'the Terms and Conditions' means the Terms and Conditions of Business;
 - 1.76 'the Website' means the website operated by or on behalf of the Customer;
2. Interpretation
- 2.1 In any agreement based on these Terms and Conditions unless otherwise specified:
 - 2.1.1 reference to a subsidiary or holding company is to be construed in accordance with the Companies Act 1985 section 736;
 - 2.1.2 reference to a party means a party to this agreement and includes his permitted assignees and the successors in title to substantially the whole of his undertaking;
 - 2.1.3 reference to a person includes any person, individual, company, firm, corporation, government, state or agency of a state, or any undertaking whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists;
 - 2.1.4 reference to a statute or statutory instrument or any of its provisions is to be construed as a reference to that statute, statutory instrument or provision as from time to time amended or re-enacted;
 - 2.1.5 words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
 - 2.1.6 references to recitals, paragraphs, paragraphs or schedules are to recitals, paragraphs and paragraphs of and schedules to this agreement;
 - 2.1.7 'control' is to be construed in accordance with the Income and Corporation Taxes Act 1988 section 416 and 'controlling' and 'controlled' shall be construed accordingly; and
 - 2.1.8 'includes' and 'including' shall mean includes and including without limitation.
 - 2.2 The schedules form part of the operative provisions of this document and references to this document, unless the context otherwise requires, include references to the recitals and the schedules.
 - 2.3 The headings in this document are for information only and shall be ignored in construing it.
3. Fees and expenses
- 3.1 Fees, Price and Charges

In consideration of performance of the Supplier's duties under these Terms and Conditions of Business the Customer shall pay to the Supplier all the Price, all Fees and Charges in accordance with the Terms of Payment. The Fees shall include the cost of the delivery of an error correction to the Customer and shall also include payment for the Software Support but excludes:

 - value added tax, which, if payable, shall be paid by the Customer; and
 - expenses as provided for in paragraph 3.8.

The Supplier may charge the Customer interest in respect of late payment of any sum due under this agreement, at a rate of 4% a year above the base rate from time to time of Barclays Bank plc or the assignee or successor in title of substantially the whole of its undertaking, from the due date for payment until payment is received.
 - 3.2 All payments to the Supplier by the Customer shall be made within 30 business days after receipt of an invoice from the Supplier. All payments shall be made in pounds sterling and by a cheque or bank transfer to the account of the Supplier at a bank to be nominated in writing by the Supplier.
 - 3.3 The Supplier will satisfy it as to the extent and nature of the activities to be carried out by it under the Development Programme and obtain all necessary information as to the risk contingencies and all other circumstances influencing the inclusiveness of the Price and the correctness and sufficiency of other rates and

prices (if any) used to calculate the Price. The Price shall not be subject to any adjustment or increase, save in accordance with the terms of the agreement with the Customer.

Any expense to be incurred by the Supplier as a consequence of any amendment agreed by the parties to the terms of the Project shall be agreed by the parties and for the avoidance of doubt shall be outside the scope of the provisions outlined above.

3.6 Surcharges

3.6.1 The Customer will pay the Supplier surcharges for:

- 3.6.1.1 any software support services that the Customer requests or authorises the Supplier to perform during the Extended Service Hours; and
- 3.6.1.2 any surcharge service provided by the Supplier.

3.6.2 Surcharges payable by the Customer to the Supplier under this paragraph will be determined in accordance with the rates set out in accordance with the Supplier's standard price lists as varied from time to time with a minimum charge of £50.00 Any surcharge will be additional to the amounts that may be due for expenses.

3.7 Additional services

The Customer will pay the Supplier for any additional services provided by the Supplier in accordance with the Supplier's then current, applicable daily rate in effect at the time of the performance or such other rate as may be agreed. Any charge for additional services will be supplemental to the amounts that may be due for the Expenses.

3.8 The Expenses

The Supplier shall be entitled to recover from the Customer its reasonable incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services, subject to the following provisions:

- 3.8.1 the Supplier shall provide a monthly summary of third party expenses incurred by him, and such expenses will be invoiced on a monthly basis with reasonable supporting documentation;
- 3.8.2 any third party expense that is reasonably expected to be more than £50 in relation to any particular matter shall require the prior approval of the Customer before it is incurred; and
- 3.8.3 the third party expenses to be reasonably incurred by the Supplier in connection with the Services in any month shall not exceed £2000 in total; thereafter any third party expenses to be incurred by the Supplier shall require the prior approval of the Customer.

4 Variations to Web Pages and Tool Kits

- 4.1 The Customer may at any time request variations to the Web Pages or the Tool Kit by giving written notice of the request to the Supplier.
- 4.2 Within 5 working days of receipt of such request or such other period as may be agreed between the parties the Supplier shall indicate by notice in writing to the Customer the terms upon which the Supplier will perform the variation requested, if it is prepared to, including the effect of the variation on the Price and the Development Programme, and the Supplier's justification for its terms. It is recognised by the parties that a variation may result in either an increase or decrease in the Price, the size of which shall be as agreed by the parties. For the avoidance of doubt, the Customer's requirement that the Supplier carry out amendments or modifications or corrective or remedial work pursuant to paragraph 5 shall not constitute a variation within the meaning of this paragraph nor shall the Supplier be obliged to accept it.
- 4.3 If the Supplier gives written notice to the Customer agreeing to perform the variation upon the terms already agreed between the parties, the Agreement shall be deemed automatically to have been amended so as to include the variation and thereafter the Supplier shall perform the Agreement upon the basis of such amended terms.
- 4.4 If the Supplier gives written notice to the Customer agreeing to perform the variation on terms different to those already agreed between the parties, the Customer shall, within 5 working days of the date of the Supplier's written notice, elect by written notice to the Supplier whether or not he wishes the variation to

proceed in which case the Agreement shall be deemed automatically to have been amended so as to include the variation requested by the Customer and such terms and thereafter the Supplier shall perform the Agreement upon the basis of the amended terms.

5 Delivery and acceptance

- 5.1 In accordance with the Development Programme the Supplier shall deliver the Web Pages to the Customer. Such delivery shall at the Customer's reasonable direction take the form of either delivery of a master copy of the content on suitable machine readable media, uploading to a specified URL, or installation directly onto the Customer's system at the Customer's premises.
 - 5.2 Following delivery in accordance with paragraph 5.1, the Customer shall carry out or procure the carrying out of a review of the Web Pages delivered at the time fixed for the review. If the Project Co-ordinator in his sole discretion considers that the Web Pages delivered or a material part of them have materially failed to conform to the Specification or the Tool Kit, he shall promptly give written notice to the Supplier specifying the reasons for which he or she considers that the Web Pages have so failed. On receipt of this notice the Supplier shall, subject to paragraph 5.3, free of charge to the Customer determine the causes for the failure and advise the Customer of them, and shall then make such changes to the Web Pages as may be reasonably necessary to achieve conformity with the Specification, the Tool Kit or any variations agreed under paragraph 5. Following the making of any such changes the Customer shall repeat or procure the repetition of the review on the same terms as set out above in this paragraph.
 - 5.3 If changes are required by the Customer to the Web Pages that on investigation pursuant to paragraph 5.2 prove to result from requirements for the Web Pages falling outside the Specification, the Tool Kit or the Customer's requirements as agreed under paragraph 5, the Supplier shall be entitled to charge on the Supplier Scale for the costs of investigation and of making any changes that are necessary and agreed.
 - 5.4 The Supplier shall ensure that the review process occurs on or before the date(s) specified for it (if any) in the Development Programme.
 - 5.5 Notwithstanding any provisional acceptance or use of the Web Pages by the Customer, final acceptance of them shall not occur until the review process under paragraph 5.2 is complete and shall be without prejudice to any of the Customer's rights set out in the Agreement.
 - 5.6 Risk of loss or damage of any kind to the Web Pages, the Content or the documentation related to them shall pass to the Customer upon acceptance of such materials.
- ## 6 Website content and data
- 6.1 The Customer shall not distribute in the Content on the Website any material or other information that:
 - 6.1.1 infringes any intellectual property rights;
 - 6.1.2 is in breach of any law, statute, or regulation;
 - 6.1.3 is defamatory, libellous, unlawfully threatening or harassing;
 - 6.1.4 is obscene, pornographic or indecent;
 - 6.1.5 contains any viruses or other computer programs intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any personal information; or
 - 6.1.6 is not solicited.
 - 6.2 For the avoidance of doubt, the Supplier does not monitor, and will have no liability for the contents of, any communications transmitted by virtue of the Services.
 - 6.3 The Customer grants to the Supplier a non-exclusive, royalty-free licence, during the term of this agreement, to use, store and maintain the Content on a server for the purposes of providing the Services in accordance with this agreement. The Supplier may make such copies as may be necessary to perform his obligations under this agreement, including back up copies of the Content. Upon the termination or expiration of this agreement, the Supplier shall destroy or deliver to the Customer all such copies of the Content and other materials provided by the Customer as and when requested by the Customer.
 - 6.4 The Agreement does not transfer or grant to the Supplier any right, title, interest in any intellectual property rights in the Content, except for the rights expressly granted in the Agreement.

- 7 Alterations to the Website
 - All additions or amendments to the Website shall be first submitted to the Supplier who shall promptly make the requested additions or amendments to the Website.
- 8 The Customer's responsibilities
 - 8.1 Principal duties of the Customer
 - The Customer shall:
 - 8.1.2 in a timely manner deliver to the Supplier the Customer Content and the Tool Kit, where relevant, in the agreed format,
 - 8.1.3 use reasonable efforts to ensure that the Customer Content is correct, and
 - 8.1.4 update the Customer Content when required to do so pursuant to the Agreement,
 - 8.1.5 enter into a Licence Agreement for the use of the Software necessary in the creation of the Website
 - 8.2 Support equipment
 - The Customer will provide at the Site a high speed modem and the appropriate telephone connection required to allow the Supplier to provide support services via modem for the Software and personal computer and communicating software, as reasonably specified by the Supplier. The Customer will provide the Supplier with the appropriate connection information in such respect.
 - 8.3 Relocation of equipment
 - If the Customer wishes to relocate his equipment, or otherwise or transfer the operation of the Supported Website to a third party host, the Customer shall give the Supplier written notice thereof at least 30 days before the relocation, modification or installation; provided that it shall only be necessary for the Customer to notify the Supplier of any such network modification or installation if the modification or installation may affect or impact upon the Provider Software or the Third Party Software.
 - 8.4 The Customer's software responsibilities
 - The Customer shall:
 - 8.4.1 make daily back-up copies of all programs and files;
 - 8.4.2 restore his data files from his most current backup on the Supplier's recommendation;
 - 8.4.3 co-operate with the Supplier and provide such information and documents as are reasonably required to assist the Supplier in the performance of his obligations under this agreement;
 - 8.4.4 implement each release within 30 days of receipt of it;
 - 8.4.5 ensure that the Software is used in a proper manner by competent trained employees only or by persons under the supervision of such employees;
 - 8.4.6 not request, permit or authorise anyone other than the Supplier to provide any support services in respect of the Provider Software;
 - 8.4.7 make available to the Supplier free of charge all information, facilities and services reasonably required by the Supplier to enable the Supplier to perform the Services including, without limitation, computer runs, core dumps, printouts, data preparation, office accommodation, typing and photocopying
 - 8.4.8 subject to their not damaging the performance of the Supported Website, allow the Supplier to install certain utility programs to assist the Supplier in providing the Services and allow the Supplier to remove such utility programs upon termination of this agreement; and
 - 8.4.9 provide a suitable vehicle parking facility free from any legal restrictions for use by the Supplier's personnel when visiting the Customer's premises.
- 9 Intellectual property rights
 - 9.1 The Customer grants to the Supplier a royalty-free, world-wide, non-exclusive licence to use the Customer Content for the purposes of the Project.
 - 9.2 The Supplier owns all the rights, title and interest (including all intellectual property rights) in the Web Pages and the Tool Kit.
 - 9.3 The Supplier owns all the rights, title and interest (including all intellectual property rights) in the parts of the Content created by the Supplier in the course of the Project.
 - 9.4 To the extent that the Supplier sub-contracts its design and creative obligation in respect of the Web Pages, the Tool Kit and the Content, or otherwise involves any third party, it shall ensure it has all necessary intellectual property rights for the project.
- 9.5 Except as expressly set out in paragraph 9.1 this agreement does not transfer or grant to the Supplier any right, title or interest in any intellectual property rights in the Customer Content.
- 10 Ownership of intellectual property rights
 - 10.1 The Software and the Documentation contain confidential information of the Supplier and, without prejudice to the terms of the Development Agreement, all intellectual property rights in the Software and the Documentation are the exclusive property of the Supplier.
 - 10.2 The intellectual property rights in enhancements, releases and error corrections provided under this agreement shall, as between the parties, be owned by the Supplier. Furthermore in each such case, subject to payment of the Fees but without further charge, upon these materials being delivered to the Customer they shall be licensed to Customer on the licensing terms applicable had they been delivered under the Development Agreement (excluding all software and technical specification and database settings).
 - 10.3 The Third Party Software is the property of the Supplier's licensor(s).
- 11 Risk in the delivered materials
 - Risk in enhancements, error corrections and releases provided under this agreement will pass to the Customer upon the date of their actual delivery to the Customer. If subsequently releases, enhancements or error corrections are (in whole or in part) destroyed, damaged or lost, the Supplier will upon request supply replacements copies of the lost material, subject to the Customer paying its then prevailing charges.
- 12 Term
 - The Agreement shall continue for the Initial Period if it is an Agreement for Supply of Website Support Service and the Initial Term if it is an Agreement for the Provisions of Hosting Services and thereafter shall automatically continue for successive 1 year period (each 'a renewal period') on the same terms and conditions unless and until terminated in accordance with the Termination provisions.
- 13 Termination
 - 13.1 A party ('the Initiating Party') may terminate the Agreement with immediate effect by written notice to the other party ('the Breaching Party') on or at any time after the occurrence of an event specified in paragraph 13.2.
 - 13.2 The events are:
 - 13.2.1 the Breaching Party committing a material breach of the agreement and failing to remedy the breach within 30 days starting on the day after receipt of notice from the Initiating Party giving details of the breach and requiring the Breaching Party to remedy it;
 - 13.2.2 the Breaching Party (if a company) passing a resolution for its winding up, a court of competent jurisdiction making an order for the Breaching Party's winding up or the presentation of a petition for the Breaching Party's winding up that is not dismissed within 7 days (other than, in each case, for the purposes of solvent amalgamation or reconstruction where the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the Breaching Party's obligations under the Agreement);
 - 13.2.3 the making of an administration order in relation to the Breaching Party or the appointment of a receiver over or an encumbrancer taking possession of or selling an asset of the Breaching Party;
 - 13.2.4 the Breaching Party making an arrangement or composition with his creditors generally or making an application to a court of competent jurisdiction for protection from his creditors generally.
 - 13.3 Any Agreement may be terminated by the Customer upon giving not less than 30 days' notice to the Supplier, such notice to expire on the last day of the Initial Period or the last day of any renewal period.
 - 13.4 An act or omission by a person who controls, is under common control with, or is controlled by a party, that would be a breach of any Agreement his part if it were an act or omission of the party, shall be deemed to be a breach of this agreement by the party.

- 13.5 Termination of the Agreement for whatever reason shall not affect either:
- 13.5.1 the accrued rights and liabilities of the parties arising in any way out of any Agreement as at the date of termination and in particular but without limitation the right to recover damages against the other; or
 - 13.5.2 provisions expressed to survive any agreement based on these Terms and Conditions, which shall remain in full force and effect.
- 14 Assignment
- 14.1 Subject to the provisions of paragraph 14.2 neither party shall assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of the Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. In particular, and without prejudice to the foregoing generality, the Supplier shall not assign, transfer, sub-contract, or in any other manner make over to any third party any of the software licensed by it to the Customer without demonstrating to the Customer's reasonable satisfaction (if requested) that the third party will be able to maintain that software.
 - 14.2 The Supplier or the Customer, if a company, shall be entitled without the prior written consent of the other to assign, transfer, sub-contract or in any manner make over the benefit or burden of the Agreement to an affiliate or to any company with which it may merge or to any company to which it may transfer its assets and undertaking, provided that the affiliate or other company undertakes and agrees in writing to assume, observe and perform the rights, powers, duties and obligations of such party under the provisions of the Agreement being assigned, transferred or otherwise made over.
- 15 Liability
- 15.1 Notwithstanding any other provision in any Agreement, the Supplier's liability to the Customer for death or injury resulting from its own negligence or that of its employees, agents or sub-contractors shall not be limited.
 - 15.2 The Supplier's entire liability to the Customer in respect of any breach of its contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with any Agreement shall be limited to the total amount of the Charges paid by the Customer during the period of 12 months up to the date of the breach.
 - 15.3 The Supplier shall not be liable to the Customer for any indirect or consequential loss the Customer may suffer even if the loss is reasonably foreseeable or the Supplier has been advised of the possibility of the Customer incurring it.
- 16 Migration services
- 16.1 On the expiration or termination of any Agreement for any reason the Customer may request the Supplier to provide the Migration Services to the Customer, or to a third party service provider identified by the Customer. The Supplier may charge for the Migration Services at its prices for such services current at that date.
 - 16.2 Where the Customer requests the Migration Services in accordance with paragraph 16.1, the Supplier shall:
 - 16.2.1 deliver the Customer Software and the Content to the Customer, or to any successor ISP at addresses and locations designated by the Customer;
 - 16.2.2 update its DNS tables to reflect the new IP addresses corresponding to the Website URLs as soon as reasonably practicable following receipt of notice from the successor ISP that it has established DNS service for the Website URLs; and
 - 16.2.3 continue to provide a DNS service for the Website URLs for a period of 30 days following the date of expiry or termination of the Agreement.
 - 16.3 The Customer shall be deemed to have accepted the Migration Services on the expiry of 60 days after delivery of the Content and the Customer Software to the Customer or his nominee as provided for in the Agreement or on notice of acceptance to the Supplier whichever is the earlier. On such acceptance the Supplier shall not be obliged to provide any further Migration Services to the Customer.
- 17 Force majeure
- 17.1 'An event of force majeure' means, in relation to either party, an event or circumstance beyond the reasonable control of that party including (without limitation) any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out or trade dispute or labour disturbance, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any Internet service provider, war, military operations, act of terrorism or riot, delay or failure in manufacture, production or supply by third parties of equipment or services.
- 17.2 The party suffering the event of force majeure shall not be deemed to be in breach of any Agreement or otherwise liable to the other party for any delay in performance or any non-performance of any obligations under such Agreement (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to an event of force majeure.
 - 17.3 If the event of force majeure in question prevails for a continuous period in excess of 3 months after the date on which it began, the other party may give notice to the party suffering the event of force majeure terminating such Agreement. The notice to terminate must specify the termination date, which must be not less than 30 clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, such Agreement will terminate on the termination date set out in the notice.
- 18 Costs
- Each of the parties shall be responsible for their respective legal and other costs incurred in relation to the preparation of any Agreement.
- 19 IP addresses
- 19.1 The Customer acknowledges that he has no right, title or interest in the IP address allocated to him, and that any IP address allocated to him is allocated as part of the Services and is not portable or otherwise transferable by the Customer in any manner whatsoever.
 - 19.2 If an IP address is renumbered or reallocated by the Supplier, the Supplier shall use his reasonable endeavours to avoid any disruption to the Customer.
 - 19.3 The Customer agrees that he will have no right, title or interest to the IP address upon termination of the Agreement, and that the acquisition by the Customer of a new IP address for the Website following termination of the Agreement shall be the exclusive responsibility of the Customer.
- 20 Warranties
- 20.1 The Supplier warrants and represents to the Customer that:
 - 20.1.1 all works created by it (or procured by it) in the course of the Project will, unless otherwise stated in the Agreement, be original work and not subject to any intellectual property or other rights of any third party or if not original will be obtained under all proper and necessary licence;
 - 20.1.2 the Customer's use and operation of the Web Pages as delivered by the Supplier and those elements of the Content or the Tool Kit created and delivered by the Supplier in accordance with the terms of the Agreement will not knowingly infringe the intellectual property rights of any third party;
 - 20.1.3 all services provided to the Customer by the Supplier shall be provided in a timely and orderly fashion by skilled and experienced personnel acting with all due care and skill and in accordance with all proper professional standards current in the website design industry.
 - 20.2 The Customer warrants and represents to the Supplier that the Supplier's use of the Customer Content in accordance with the terms of any Agreement will not infringe the intellectual property rights of any third party.
 - 20.3 Save as expressly set out in the Agreement all representations, warranties, terms and conditions, whether oral or written, express or implied by law, custom, statute or otherwise and including but not limited to satisfactory quality or fitness for any particular purpose are excluded, save for the statutorily implied terms as to title.
- 21 Intellectual property rights indemnity
- The Customer agrees to indemnify the Supplier against any and all liability, loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered or by a third party whether direct, indirect or consequential arising out of any dispute or contractual, tortious or other claims or

proceedings brought by a third party alleging infringement of his intellectual property rights by the Web Pages, those elements of the Tool Kit modified by Supplier or the Content (as created or procured by the Supplier):

21.1 where an injunction restraining use by the Customer of the Web Pages, the Tool Kit or the Content (as delivered by the Supplier) or any part of it is, in the reasonable good faith opinion of the Customer's legal advisers communicated in writing to the Supplier, likely to be granted by the court to the third party, the Supplier shall:

21.1.1 do all acts and things necessary to render those parts of the Web Pages, the Tool Kit or the Content created or procured by the Supplier, or the appropriate part of them, non-infringing without affecting any of the Supplier's other duties and obligations under any agreement based on these Terms and Conditions.

21.2 the Supplier gives written notice to the Customer of any claim or proceeding as soon as reasonably possible following receipt of it;

21.3 the Supplier makes no admission of liability and gives the Customer sole authority to defend or settle the claim or proceedings at the Customer's cost and expense; and

21.4 the Supplier gives the Customer all reasonable assistance in connection with any such claims or proceedings.

22 Software licence and rights

22.1 If and to the extent that the Customer requires use of the Supplier Software in order to use the Services, the Supplier grants to the Customer a world-wide, non transferable, non-exclusive licence to use the Supplier Software in object code form only. The Customer has the right to authorise his employees, agents and third party consultants and contractors to use the Supplier Software as aforesaid provided that such use is consistent with the terms of the Agreement.

22.2 The Customer grants to the Supplier a royalty-free, world wide, non-exclusive licence to use the Content and the Customer Software in relation to his obligations under any Agreement in connection with the provision of the Services.

22.3 Except as expressly set out in paragraphs 22.1 and 22.2, any does not:

22.3.1 transfer or grant to the Customer any right, title, interest or intellectual property rights in the Supplier Software;

22.3.2 transfer or grant to the Supplier any right, title, interest or intellectual property rights in the Customer Software.

22.4 The Customer agrees that he will not himself, or through any parent, subsidiary, affiliate, agent or other third party:

22.4.1 copy the Supplier Software except as expressly permitted under this agreement;

22.4.2 sell, lease, license or sublicense the Supplier Software or the documentation connected with it; or

22.4.3 use any confidential information of the Supplier.

If the Customer is permitted to make any copies of the Supplier Software, the Customer must reproduce all proprietary notices of the Supplier, if any, on the copies.

23 Confidentiality

23.1 During the term of the Agreement and after termination or expiration of the Agreement for any reason for a period of 1 year starting on the date of any Agreement, the following obligations shall apply to the party receiving confidential information ('the Receiving Party') from the other party ('the Disclosing Party').

23.2 Subject to paragraph 23.3, the Receiving Party:

23.2.1 may not use any confidential information for any purpose other than the performance of their obligations under the Agreement;

23.2.2 may not disclose any confidential information to any person except with the prior written consent of the Disclosing Party; and

23.2.3 shall make every effort to prevent the use or disclosure of the confidential information.

23.3 The obligations of confidence referred to in all provisions of this paragraph shall not apply to any confidential information that:

23.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain prior to its receipt by him;

23.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;

23.3.3 is required to be disclosed by any applicable law or regulation; or

23.3.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the Disclosing Party in respect thereof and who imposes no obligations of confidence upon the Receiving Party.

23.4 The obligations of the parties under all provisions of this paragraph shall survive the expiry or the termination of any Agreement based on these Terms and Conditions for whatever reason.

24 Non-solicitation of staff

The Customer agrees that during the term of any Agreement and for an additional period of 1 year, the Customer shall not directly or indirectly canvass with a view to offering or providing employment to, offer to contract with or entice to leave any employee of or contractor to the Supplier engaged in the performance of the Services without the prior written consent of the Supplier.

25 Dispute resolution

25.1 All disputes in connection with any Agreement at any time arising between the parties that cannot be resolved by the Project Manager and the Project Coordinator and thereafter shall be referred to the finance directors of the parties. If they are unable to resolve the dispute, it may be referred to an expert.

25.2 The expert shall have appropriate qualifications and practical experience to resolve the particular dispute and be agreed by the parties or in the event of failure to agree shall be appointed by the President for the time being of the Law Society of England and Wales.

25.3 The parties shall promptly furnish to the expert all information reasonably requested by him relating to the particular dispute, imposing appropriate obligations of confidence.

25.4 The expert shall be required by the parties to use all reasonable endeavours to render his decision within 30 days following his receipt of the information requested or if this is not possible so soon thereafter as may reasonably be practicable and the parties shall co-operate fully with the expert to achieve this objective.

25.5 The parties shall share equally the fees and expenses of the expert. The decision of the expert shall be final and binding upon each of the parties.

25.6 The dates set out in the Development Programme shall be postponed by a period to be agreed between the parties or determined by the expert. For the avoidance of doubt the provisions of this paragraph provide for a form of advanced dispute resolution and are not a reference to arbitration.

26 Waiver

26.1 A waiver of any term, provision or condition of any Agreement shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which it is given.

26.2 No failure or delay on the part of any party in exercising any right, power or privilege under any agreement based on these Terms and Conditions shall operate as a waiver of it, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of it or the exercise of any other right, power or privilege.

26.3 No breach of any provision of any agreement based on these Terms and Conditions shall be waived or discharged except with the express written consent of the parties.

27 Invalidity

27.1 If any provision of any Agreement is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, whether pursuant to any judgment or otherwise:

27.1.1 the validity, legality and enforceability under the law of that jurisdiction of any other provision, and

27.1.2 the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision, shall not be affected or impaired in any way.

- 27.2 If any provision of any Agreement is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, the provision shall be divisible from any Agreement and shall be deemed to be deleted from it and the validity of the remaining provisions shall not be affected. If any such deletion materially affects the interpretation of this agreement, the parties shall use their best endeavours to negotiate in good faith with a view to agreeing a substitute provision as closely as possible reflecting the commercial intention of the parties.
- 28 Remedies
- 28.1 The rights and remedies provided for by any Agreement are cumulative with and not exclusive of any rights or remedies provided by law.
- 28.2 Without prejudice to any other rights or remedies of the parties, each party acknowledges for the benefit of the other that damages might not be an adequate remedy for any breach of the provisions of the Agreement and that, accordingly, either party shall be entitled without proof of special damage to the remedies of injunction or specific performance and other equitable remedies for any threatened or actual breach of the provisions of any Agreement by the other.
- 29 Notices
- 29.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by any Agreement shall be in writing and shall be delivered personally or sent by fax or prepaid first class post:
- in the case of the Customer to their Registered Office:
in the case of the Supplier to their Registered Office:
and shall be deemed to have been duly given or made as follows:
- 29.1.1 if personally delivered, upon delivery at the address of the relevant party,
29.1.2 if sent by first class post, two business days after the date of posting,
29.1.3 if sent by air mail, 5 working days after the date of posting, and
29.1.4 if sent by fax, when despatched,
provided that if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made after 17:00 hours, it shall be deemed to be given or made at the start of the next business day.
- 29.2 A party may notify the other party to any Agreement of a change to his name, relevant addressee, address or fax number for the purposes of the above paragraph, provided that notification shall only be effective on:
- 29.2.1 the date specified in the notification as the date on which the change is to take place; or
29.2.2 if no date is specified or the date specified is less than 5 business days after the date on which notice is given, the date falling 5 business days after notice of any such change has been given.
- 30 Entire agreement
- 30.1 any Agreement unless otherwise expressly provided elsewhere in such agreement embodies and sets forth the entire Agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of such Agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in such Agreement, save for any representation made fraudulently.
- 30.2 Unless otherwise expressly provided elsewhere in any Agreement, such agreement may be varied only by a document signed by both of the parties.
- 31 Announcements
- Both parties agree not to disclose to any third party, other than to their respective bankers or other professional advisers on appropriate conditions of confidentiality, the fact of or details of any Agreement. The text of any press release or other communication to be published by or in the media concerning the subject matter of any agreement based on these Terms and Conditions shall require the approval of each party.
- 32 Relationship of the parties
- Nothing in the Agreement and no action taken by the parties pursuant to this agreement shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture, the agents of each other or any other co-operative entity.
- 33 Governing law and jurisdiction
- 33.1 The Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this agreement or its formation) shall be governed by and construed in accordance with the laws of England.
- 33.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of England to hear and determine any suit, action or proceedings or settle any disputes arising out of or in connection with the Agreement, and to enforce any judgment against their respective assets.
- 34 Exclusion of third party rights
- The Contracts (Rights of Third Parties) Act 1999 shall not apply to any Agreement and no person other than the parties to this agreement shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it.
- 35 General
- Unless otherwise agreed by the Supplier in writing, these Terms and Conditions apply to any agreement based hereon whatever the terms proposed by the Customer and whatever their date.
- 36 Terms in relation to supply of Hosting Services
- Paragraph 36 only applies to Customer's who have signed the Agreement for Hosting Services which incorporates these Terms and Conditions whereby the Customer wishes to provide the Supplier with data that will be hosted on the Supplier's servers and made accessible via the Internet.
- 36.1 Duties
- 36.1.1 Subject to the Terms and Conditions, the Supplier shall provide the hosting services to the Customer as agreed in the Agreement for the provision of Hosting Services
- 36.1.2 The Customer shall deliver the Website and the Customer Software to the Supplier in a format specified by the Supplier at a mutually convenient time.
- 36.2 Service levels – standards and interruptions
- 36.2.1 The Website shall be available to visitors pursuant to the Services 99.99% of the time. Where the Website is not so available, the Customer will be credited with an amount calculated monthly as an aggregate of all downtime events
- 36.2.2 'Downtime' means any service interruption of one minute or more in the availability to visitors of the Website pursuant to the Services, but only if the interruption is due to a default by the Supplier resulting from the Supplier performing an update to the Supplier Server
- 36.2.3 Outages outside the control of the Supplier and any emergency and previously scheduled windows for router, switch or server maintenance, are not to be included in downtime calculations. The Supplier shall make all commercially reasonable efforts to provide the Customer with previous email notification of all scheduled and emergency outages.
- 36.2.4 The Supplier shall notify the Customer of any report of downtime, and investigate it using suitably qualified personnel, as soon as reasonably practicable after becoming aware of it, and shall remedy the downtime as soon as reasonably practicable.
- 37 Terms in relation to Supply of Website Support Services
- Paragraph 37 only applies to Customers who have signed the Agreement for Software Support Order which incorporates these Terms and Conditions of Business. The Customer has launched or intends to launch on the Internet and is wholly dependent on the provision of support services by the Supplier to the Site. The Customer has agreed to procure and the Supplier to supply support services upon the following terms and conditions.
- 37.1 The Software Support

Terms & Conditions Of Business

37.1.1 Agreement for support

With effect from the Effective Date the Supplier shall, in response to support requests from the Customer in accordance with Terms and Condition of Business provide the Software Support and the other support services, if any, expressly identified in the schedule or otherwise agreed under the Agreement.

37.1.2 Support requests

The Customer will make all support calls on the Support Line. The Supplier shall ensure that the Support Line telephone number will have a voicemail facility. The Supplier shall be entitled to change the telephone number or e-mail address of the Support Line from time to time upon reasonable prior written notice to the Customer. A support specialist will return calls or reply to emails placed through the Support Line during the Service Hours

37.1.2.1 in the case of telephone calls, the earlier of the voicemail system logging the call or the support specialist receiving the call; and

37.1.2.2 in the case of e-mail, receipt by the Support Line e-mail inbox.

The Supplier is not responsible for responding to support calls or messages placed other than via the Support Line and only those members of the Customer's personnel named in the schedule may use the Support Line.

37.1.3 Errors and corrections

During the term of any Agreement, the Supplier will use reasonable endeavours to correct all reproducible errors reported by the Customer through the Support Line in accordance with the following terms and conditions:

37.1.3.1 Immediately after reviewing a report of an error from the Customer, the Supplier will, acting reasonably, with the co-operation of the Customer, categorise the error as either level 1, level 2 or level 3 and thereafter will commence and diligently seek an appropriate error correction by:

37.1.3.1.1 for all errors, promptly answering the Customer's questions and diagnosing errors during the Service Hours by telephone;

37.1.3.1.2 for all errors, promptly troubleshooting and diagnosing errors during the Service Hours by telephone, modem or other remote connection (save that the Customer shall be responsible for providing the specified equipment for the use of such devices and for implementing any temporary procedures requested by the Supplier while a permanent solution is sought); and

37.1.3.1.3 if an appropriate error correction is not found by the first and second line support referred to above and the error cannot reasonably be dealt with remotely, providing on-site service for the Software or the Background Content during the Service Hours in accordance with clause 4.5.

37.1.3.2 The Supplier will use all reasonable endeavours to resolve errors within a reasonable time period as dependant by error level

37.1.3.3 Notwithstanding the response times indicated above, the Supplier will endeavour to reduce his response and resolution time when the Customer has properly indicated that an error correction is urgently needed, and shall continue his efforts to resolve errors beyond the target resolution times if necessary.

37.1.3.4 In determining which level is appropriate the following criteria shall be applied:

37.1.3.4.1 level 1 – an error that results in the loss of a facility or function material to the proper operation of the Software and critical to the Supported Website's operation;

37.1.3.4.2 level 2 – an error that results in loss or interrupted provision of a facility or function material to the proper operation of the Software including (without limitation) an error that results in cosmetic errors on-screen as part of the Supported Website's live operation, but does not prevent the Customer from carrying out his business using the Supported Website; and

37.1.3.4.3 level 3 – an error that results in a minor loss of facility or functionality.

37.1.4 Downtime

Where the Supplier recommends and the Customer agrees that the best method of error correction involves an interruption of the live operation of the Supported Website,

the Supplier shall use all reasonable endeavours to perform the support in accordance with the Customer's direction as to the timing of downtime and shall seek to minimise business disruption so far as is reasonably practicable.

37.1.5 On-site software support

If the Customer reports any suspected error that causes the Software to be inoperative or significantly impairs its functionality and, in his reasonable discretion, determines that on-site service is necessary or appropriate under the circumstances to resolve the reported error efficiently and promptly, the Supplier will begin on-site troubleshooting and diagnosis of the problem so as to diligently seek an error correction as soon as reasonably practicable and will respond within the following time periods after the error level is a reasonable time period as dependent by error level and geographic location.

37.1.6 Supported releases

The Supplier shall be obliged to provide the Software Support only in respect of the latest release, and any assistance provided in respect of any other release shall constitute surcharge services.

37.1.7 Navigational and graphical errors

Subject to support for navigational errors or graphical errors, being expressly identified by the schedule as being taken by the Customer, and subject to the Customer identifying the error in sufficient detail via the Support Line and providing appropriate remote access, the Supplier shall diligently investigate and resolve such errors as soon as reasonably practicable further to a customer

37.1.8 Releases

So long as the Agreement remains in full force and effect and the Customer is not in material breach of it, the Supplier will, as part of the Software Support, provide the Customer with all releases generally made available to his clients. The Supplier will furnish telephone assistance for installation of releases during the Service Hours as part of the Software Support. The Software Support does not include any telephone assistance provided after the Service Hours nor any training the Customer may require or request on any release, nor any additional assistance required to install and implement a release where the Customer has non-standard features in the Software. Such services are additional services and will be provided at the Supplier's then current applicable hourly rate. However, the Supplier will provide documentation for each release as applicable as part of the Software Support. The Supplier warrants that no release will adversely affect any of the then existing facilities and functions of the Software or their interaction with the Background Content.

37.1.9 Management reporting

The Supplier shall provide the Customer with service information on the Software Support on request commencing on the end of the first full calendar month following the Effective Date showing:

37.1.9.1 the number of logged calls made by the Customer;

37.1.9.2 the name of each caller;

37.1.9.3 the nature of the error or other problem;

37.1.9.4 ongoing and unresolved problems; and

37.1.9.5 achievement or otherwise by the Supplier of the response and resolution times set out in this clause.

37.2 Other services

37.2.1 Additional services

The Supplier will provide such additional services as may be agreed upon from time to time by the parties including, without limitation, the following:

37.2.1.1 software training, eg, in connection with the use of any release, and

37.2.1.2 customisation or website or software development other than release installation or error correction implementation.

However, prior to providing any services under this clause, the Supplier will obtain the Customer's request for such services and agreement as to price, time scale and the availability of any such customisation

or software development to other customers.

37.2.2 Surcharge services

The Supplier will provide such surcharge services as the parties may agree upon from time to time. Surcharge services may include, but are not limited to, services requested because of any one or more of the following conditions:

- 37.2.2.1 repair, adjustment or modification of the Software, whether made or attempted, by persons other than authorised employees of the Supplier;
- failure of the Customer properly to follow recommended daily back-up procedures;
- failure of the Customer properly to follow procedures set forth in the Documentation;
- failure by the Customer to implement recommendations in respect of or solutions to errors previously advised by the Supplier;
- modification to or creation of new content;
- use of the Software on equipment other than that specified by the Supplier;
- use of the Software within a network configuration other than that specified in the configuration audit carried out by the Supplier and upon which the Software was first installed, unless expressly agreed to in writing by the Supplier;
- use of the Software for a purpose for which it was not designed;
- failure of the Customer to install a release within 30 days of receipt of it;
- use of operating software that does not meet manufacturer's or the Supplier's specifications or which has not otherwise been approved by either of them;
- misuse or accident caused by the Customer;
- improper programming or improper installation by the Customer (other than in accordance with instructions received from the Supplier);
- damage or problems caused in transit or reinstallation following any relocation of the equipment upon which the Software is installed or to which the Software is connected;
- damage or problems caused by accessories, alterations, attachments or other devices not furnished, maintained or approved by the Supplier;
- failure of air conditioning, electrical power or humidity control; or
- acts of God, fire, flood, earthquake, lightning strikes, riots, war, nuclear disaster or other such causes.

38. Terms in relation to Supply of Web Pages

Recitals

Paragraph 38 only applies to Customers who have signed an Agreement for the Supply of Web Page. The Customer operates an internet website for the purpose of marketing and/or selling his products or services. The Supplier is engaged in business as a web software developer and has agreed to supply the Web Pages on an ongoing basis for the Customer upon the following terms and conditions.

38.1 Principal duties of the Supplier

38.1.1 In consideration of payment of the Price by the Customer and subject to the terms and conditions of the Agreement, the Supplier shall from the date of the Agreement carry out on behalf of the Customer and, as the case may be, advise and assist the Customer in, the Project.

38.1.2 In pursuance of the objectives set out in these Terms and Conditions of Business, the Supplier undertakes:

- 38.1.2.1 to advise the Customer on all matters relating to the Project,
- 38.1.2.2 to create and deliver the Web Pages, and
- 38.1.2.3 to maintain and update the Tool Kit from time to time,
 - in each case on or before the dates set out in the Development Programme and on the terms and conditions set out in the Agreement.

38.2 Project management

38.2.1 The Supplier shall appoint the Project Manager and make him available to manage the Project upon the terms of this clause. The Supplier shall ensure that the Project Manager at all times during the period of this agreement acts promptly, reasonably and fairly. In particular, and without prejudice to the

generality of the foregoing, the Supplier shall ensure that the Project Manager:

- 38.2.1.1 on a business day basis makes available as many man days of effort as are from time to time required by the needs of the Development Programme for the Web Pages;
- 38.2.1.2 gives equal priority to the Project over any and all the other business activities being undertaken by the Project Manager; and
- 38.2.1.3 keeps detailed records of all acts and things done by him and the Project Team in relation to the Project and at the Customer's request either makes the records available for inspection on reasonable notice by the Customer and his professional advisers or, on request, provides the Customer with copies of them; and
- 38.2.1.4 maintains the Tool Kit in good order and updates it when necessary to reflect delivery of the Web Pages and the Supplier's input as to style guidance changes as agreed from time to time.
 - The Project Manager shall keep all records confidential to the Supplier and the Customer.

- 38.2.2 The Customer and Supplier will enter into a separate confidentiality agreement annexed to the Agreement.
- 38.2.3 The Customer shall appoint the Project Co-ordinator and make him available to co-ordinate with the Project Manager. The parties shall ensure that the Project Manager and the Project Co-ordinator:
 - 38.2.3.1 organise meetings at not greater than monthly intervals during the Project at which they review the progress of the Project and agree a report of it, and
 - 38.2.3.2 provide all information and documentation required by the Supplier for proper performance of the Project and the Services.
 - For the avoidance of doubt, the powers of the Project Manager and the Project Co-ordinator shall not include the power to alter any material aspects of the Development Programme.
- 38.2.4 If the Project Manager or the Project Co-ordinator is prevented by illness or injury from performing his duties under this agreement, the Supplier or the Customer, as the case may be, shall report the fact and its expected duration to the other party. If the Project Manager's absence through illness or injury continues for more than 3 consecutive business days, the Supplier shall make available an alternative suitably qualified and experienced person acceptable to the Customer to be the Project Manager. If the Project Co-ordinator's absence through illness or injury continues for more than 3 consecutive business days, the Customer shall make available an alternative suitably qualified and experienced person to be the Project Co-ordinator.
- 38.2.5 The Supplier shall provide or procure the provision of the services of the Project Team and such other persons as are necessary from time to time in order to complete the Project's requirements for the Web Pages in accordance with the Development Programme. The Supplier shall ensure that such personnel individually possess suitable skills and experience and that they are as a team suitably qualified to carry out the work comprised in the Development Programme.
- 38.2.6 Throughout the period of the Agreement the Customer and the Supplier shall afford each other's personnel such access to their respective premises as they reasonably require to comply with and otherwise fulfil their duties and obligations under this agreement. In particular, the Customer and the Supplier shall respectively:
 - 38.2.6.1 make sufficient working space available to the other's personnel and provide such facilities as the other may reasonably require;
 - 38.2.6.2 afford the other free of charge occasional typing and photocopying services and the use of telephone, fax machines or computers as may reasonably be required during work at the other's premises; and
 - 38.2.6.3 advise the other's personnel and other nominees of the rules and regulations in force from time to time for the conduct of personnel at his premises. Each party shall ensure that his personnel and other nominees comply with any such rules and regulations.