
SUPPLY OF WEBSITE SUPPORT SERVICES AGREEMENT TERMS & CONDITIONS

These are the terms and conditions relating to the supply of website support services agreed in the web services Agreement between the Company and the Client as defined below

BETWEEN:

- (1) Blue Cow Digital Limited a company registered in England and Wales under number 12130493 whose registered office is at 11b Houghton Street, Southport. PR9 0NS ("the Provider") and
- (2) The Company or Partnership named in the Web Services Agreement ("the Customer")

RECITALS:

- (1) The Customer has launched OR intends to launch a website on the Internet and is wholly dependent on the provision of support services by the Provider to the Site.
- (2) The Customer has agreed to procure and the Provider to supply support services upon the following terms and conditions.

IT IS AGREED as follows:

1. Definitions

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"additional services"	the services to be performed by the Provider pursuant to clause 4.1 consisting of services other than website support;
"an affiliate"	means in relation to any company: <ul style="list-style-type: none">• any subsidiary or holding company of the company or any subsidiary of the holding company; or• any other entity controlling or controlled by the company;
"the Background Content"	the screen templates and background layouts and any other background content supplied to the Customer by the Provider (if any) under the Development Agreement as modified by the Provider from time to time;
"a business day"	a day (excluding Saturdays) on which banks generally are open for the transaction of normal banking business (other than solely for trading and settlement in euros);
"the Development Agreement"	the agreement between the Provider and the Customer for the development and provision of software and technical architecture for the Supported Website;
"the Documentation"	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 Provider to the Customer in either printed or machine readable form at the Customer's discretion;
"the Effective Date"	the commencement date for this agreement as set out in the schedule;
"an enhancement"	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;
"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: <ul style="list-style-type: none">• the Customer's refusal to restore files or follow any other reasonable written (either hard copy or e-mail) recommendation by the Provider;• the use of any software program, package or file not specifically provided by the Provider or previously agreed in writing by the Provider;• a malfunction of the equipment;• any use of the Software outside the terms of the Development Agreement (so far as it provides for ongoing use); or• any event or matter that is subject to the provision of the Additional Services or the Surcharge Services;

“an error correction”	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;
“the Expenses”	those amounts calculated pursuant to clause 5.4;
“the Extended Service Hours”	all hours outside the Service Hours;
“the Fees”	the Provider’s fees for the provision of the Services provided for at clause 3 and 5, including the Software Support;
“a graphical error”	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;
“the Host Equipment”	the items and components of computer hardware, operating system and peripherals recommended by the Provider for use in the operation of the Supported Website;
“the Initial Period”	the initial term of this agreement as set out in the schedule;
“intellectual property rights”	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;
“a navigational error”	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;
“new content”	content introduced to the Supported Website by the Customer or any third party;
“a release”	updates to the Software identified by a release number (e.g., Release 1.3), including error corrections and enhancements, which are distributed generally from time to time by the Provider;
“a renewal period”	has the meaning given in clause 12;
“the Service Hours”	the hours between 9am and 4pm each business day;
“the Services”	additional services, the Software Support and surcharge services;
“the Site”	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 Provider to provide on-site support under this agreement, or such other address as notified to the Provider in writing at which the Customer may carry on business from time to time;
“the Software”	means: <ul style="list-style-type: none"> • the Provider’s proprietary software programs in object code form identified by title and reference number in the schedule, including any enhancements, adaptations, modifications, localisation and changes to them (‘the Provider Software’); and • the Third Party Software;
“the Software Support”	the Provider’s obligations to support the Software pursuant to clause 3;
“the Specification”	the description of the facilities and functions of the Software and (if relevant) the Background Content as set out at or referred to in the Documentation or as expressly provided for under the Development Agreement’s specification documents;
“the Supported Website”	the website developed and installed by the Provider under the Development Agreement and further identified (in its operational format, including by current host server) in the schedule;
“the Support Line”	the telephone number or e-mail address set out in the schedule for the reporting of an error to the Provider, which may be changed pursuant to clause 3.2;

“a support specialist”	an employee or agent of the Provider who is qualified to effect a error correction or provide other support services under this agreement;
“surcharge services”	the services to be performed by the Provider pursuant to clause 4.2 of this agreement, comprising services not included in the Software Support;
“the Terms of Payment”	the terms for payment of the Fees set out in the schedule;
“the Third Party Software”	the third party software specified in the schedule in object code form.
“Web Services Agreement”	the contract listing the details of the company or other legal entity, the fee and the term in relation to the provision of web maintenance and support services and signed in acceptance of these terms and conditions.

2. Interpretation

2.1 In this agreement 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 is reference to a party to this agreement and includes his permitted assignees and the respective 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 or statutory instrument or such 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 reference to recitals, clauses, paragraphs or schedules is to recitals, clauses or paragraphs or 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 including without limitation.

2.2 The schedules form part of the operative provisions of this agreement and references to this agreement shall, unless the context otherwise requires, include references to the recitals and the schedules.

2.3 The index to and the headings in this agreement are for information only and shall be ignored in construing it.

3. The Software Support

3.1 Agreement for Support

With effect from the Effective Date the Provider shall, in consideration of the Fees being paid in accordance with the Terms of Payment and in response to support requests from the Customer in accordance with clause 3.2 provide the Software Support and the other support services, if any, expressly identified in the schedule or otherwise agreed under this agreement.

3.2 Support Requests

The Customer will make all support calls on the Support Line. The Provider shall ensure that the Support Line telephone number will have a voicemail facility. The Provider 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 not later than 240 minutes after:

- 3.2.1 in the case of telephone calls, the earlier of the voicemail system logging the call or the support specialist receiving the call; and
- 3.2.2 in the case of e-mail, receipt by the Support Line e-mail inbox.

The Provider 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 by the customer and agreed in writing by the company may use the Support Line.

3.3 Errors and Corrections

During the term of this agreement, the Provider 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:

- 3.3.1 Immediately after reviewing a report of an error from the Customer, the Provider 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:

- 3.3.1.1 for all errors, promptly answering the Customer's questions and diagnosing errors during the Service Hours by telephone;
- 3.3.1.2 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 Provider while a permanent solution is sought); and
- 3.3.1.3 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 3.5.

3.3.2 The Provider will use all reasonable endeavours to resolve errors within the following time periods:

- 3.3.2.1 level 1 errors, within 8 business hours;
- 3.3.2.2 level 2 errors, within 16 business hours; and
- 3.3.2.3 level 3 errors, within 7 business days.

3.3.3 Notwithstanding the response times indicated above, the Provider 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.

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

- 3.3.4.1 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;
- 3.3.4.2 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
- 3.3.4.3 level 3-an error that results in a minor loss of facility or functionality.

3.4 Downtime

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

3.5 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 Provider 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 determined:

- 3.5.1** for a level 1 error occurring within North West England, Yorkshire and North Wales, within 16 business hours; and for a level 1 error occurring outside those specified areas, within 3 business days;
- 3.5.2** for a level 2 error occurring within North West England, Yorkshire and North Wales, within 3 business days; and for a level 2 error outside those specified areas, within 4 business days; and
- 3.5.3** for a level 3 error, within 30 business days.

3.6 Supported Releases

The Provider 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.

3.7 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 Provider shall diligently investigate and resolve such errors as soon as reasonably practicable further to a customer request in accordance with clause 3.2.

3.8 Releases

So long as this agreement remains in full force and effect and the Customer is not in material breach of it, the Provider will, as part of the Software Support, provide the Customer with all releases generally made available to his clients. The Provider 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 Provider's then current applicable hourly rate. However, the Provider will provide documentation for each release as applicable as part of the Software Support. The Provider 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.

3.9 Management Reporting

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

- 3.9.1** the number of logged calls made by the Customer;
- 3.9.2** the name of each caller;
- 3.9.3** the nature of the error or other problem;

- 3.9.4 ongoing and unresolved problems; and
- 3.9.5 achievement or otherwise by the Provider of the response and resolution times set out in this clause.

4. Other Services

4.1 Additional Services

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

- 4.1.1 software training, e.g., in connection with the use of any release, and
- 4.1.2 customisation or website or software development other than release installation or error correction implementation.

However, prior to providing any services under this clause, the Provider 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.

4.2 Surcharge Services

The Provider 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:

- 4.2.1 repair, adjustment or modification of the Software, whether made or attempted, by persons other than authorised employees of the Provider;
- 4.2.2 failure of the Customer properly to follow recommended daily back-up procedures;
- 4.2.3 failure of the Customer properly to follow procedures set forth in the Documentation;
- 4.2.4 failure by the Customer to implement recommendations in respect of or solutions to errors previously advised by the Provider;
- 4.2.5 modification to or creation of new content;
- 4.2.6 use of the Software on equipment other than that specified by the Provider;
- 4.2.7 use of the Software within a network configuration other than that specified in the configuration audit carried out by the Provider and upon which the Software was first installed, unless expressly agreed to in writing by the Provider;
- 4.2.8 use of the Software for a purpose for which it was not designed;
- 4.2.9 failure of the Customer to install a release within 7 days of receipt of it;
- 4.2.10 use of operating software that does not meet manufacturer's or the Provider's specifications or which has not otherwise been approved by either of them;
- 4.2.11 misuse or accident caused by the Customer;
- 4.2.12 improper programming or improper installation by the Customer (other than in accordance with instructions received from the Provider);
- 4.2.13 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;
- 4.2.14 damage or problems caused by accessories, alterations, attachments or other devices not furnished, maintained or approved by the Provider;
- 4.2.15 failure of air conditioning, electrical power or humidity control; or
- 4.2.16 acts of God, fire, flood, earthquake, lightning strikes, riots, war, nuclear disaster or other such causes.

5. Fees and Expenses

5.1 Fees

The Customer agrees to pay the monthly Fees for web support services as set out in the web services agreement for the entire duration of the term specified in that agreement or the Initial period specified herein, whichever is longer. 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:

- 5.1.1 value added tax, which, if payable, shall be paid by the Customer; and
- 5.1.2 expenses as provided for in clause 5.4.

5.2 Surcharges

5.2.1 The Customer will pay the Provider surcharges for:

- 5.2.1.1 any software support services that the Customer requests or authorises the Provider to perform during the Extended Service Hours; and
- 5.2.1.2 any surcharge service provided by the Provider pursuant to clause 4.2.

5.2.2 Surcharges payable by the Customer to the Provider under this clause will be determined in accordance with the prevailing engineering rates available on request from the Provider with a minimum charge of £295. Any surcharge will be additional to the amounts that may be due for expenses.

5.2.3 The Provider shall be entitled to vary the rates for surcharge services set out (available on request).

5.3 Additional Services

The Customer will pay the Provider for any additional services provided by the Provider under clause 4.1 in accordance with the Provider'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.

5.4 The Expenses

The Provider shall be entitled to recover from the Customer his 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:

5.4.1 the Provider 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;

5.4.2 any third party expense that is reasonably expected to be more than £100 in relation to any particular matter shall require the prior approval of the Customer before it is incurred; and

5.4.3 the third party expenses to be reasonably incurred by the Provider in connection with the Services in any month shall not exceed £500 in total; thereafter any third party expenses to be incurred by the Provider shall require the prior approval of the Customer.

6. The Customer's Responsibilities

6.1 Support Equipment

The Customer will provide at the Site a high speed modem and the appropriate telephone connection required to allow the Provider to provide support services via modem for the Software and personal computer and communicating software, as reasonably specified by the Provider. The Customer will provide the Provider with the appropriate connection information in such respect.

6.2 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 Provider 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 Provider 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.

6.3 The Customer's Software Responsibilities

The Customer shall:

6.3.1 make daily back-up copies of all programs and files;

6.3.2 restore his data files from his most current backup on the Provider's recommendation;

6.3.3 co-operate with the Provider and provide such information and documents as are reasonably required to assist the Provider in the performance of his obligations under this agreement;

6.3.4 implement each release within 14 days of receipt of it;

6.3.5 ensure that the Software is used in a proper manner by competent trained employees only or by persons under the supervision of such employees;

6.3.6 not request, permit or authorise anyone other than the Provider to provide any support services in respect of the Provider Software;

6.3.7 make available to the Provider free of charge all information, facilities and services reasonably required by the Provider to enable the Provider to perform the Services including, without limitation, computer runs, core dumps, printouts, data preparation, office accommodation, typing and photocopying, at a time convenient to the Customer;

6.3.8 subject to their not damaging the performance of the Supported Website, allow the Provider to install certain utility programs to assist the Provider in providing the Services and allow the Provider to remove such utility programs upon termination of this agreement; and

6.3.9 provide a suitable vehicle parking facility free from any legal restrictions for use by the Provider's personnel when visiting the Customer's premises.

7. Ownership of Intellectual Property Rights

7.1 The Software and the Documentation contain confidential information of the Provider 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 Provider.

7.2 The intellectual property rights in enhancements, releases and error corrections provided under this agreement shall, as between the parties, be owned by the Provider. 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.

7.3 The Third Party Software is the property of the Provider's licensor(s).

8. Warranties

8.1 The Provider warrants and represents to the Customer that he will:

8.1.1 perform additional services, the Software Support and surcharge services and his obligations under this agreement generally with reasonable skill, diligence and care in accordance with efficient call centre practice and, in relation to error correction, good software industry practice; and

8.1.2 maintain a sufficient number of available support specialists so as to perform his obligations under this agreement.

8.2 The Customer shall give notice to the Provider as soon as he is reasonably able upon becoming aware of a breach of warranty.

8.3 Save as set out above, the Provider makes no other warranty, term, representation or condition in relation to the Software, the Background Content and the Documentation or any services provided by him under this agreement whether as to performance, functionality or otherwise and in particular, without prejudice to the foregoing, the Provider does not warrant that even subsequent to software support the operation of the Software (including where in machine readable form the Documentation) will be uninterrupted or error free.

8.4 Save as expressly set out in this 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.

9. Liability

9.1 Notwithstanding any other provision in this agreement, the Provider's liability to the Customer for death or injury resulting from his own negligence or that of his employees, agents or sub-contractors shall not be limited.

9.2 The Provider's entire liability to the Customer in respect of any breach of his contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with this agreement shall be limited to £1000 or 3 months average fees, whichever is the lower.

9.3 The Provider 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 Provider has been advised of the possibility of the Customer incurring it.

10. Intellectual Property Rights Indemnity

The Customer agrees to indemnify the Provider against any and all liability, loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Provider 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 releases, enhancements or error correction, provided that:

10.1 this indemnity shall not apply to any infringement of the third party's intellectual property rights arising as a direct result of any alteration or modification to releases, enhancements or error corrections or any part of them ('new material') by the Customer or as a result of the use of new material in combination with hardware or software not supplied or approved by the Provider;

10.2 in addition to the above indemnity, where an injunction restraining use by the Customer of new material is, in the opinion of the Customer's legal advisers, likely to be granted by the court to the third party, and that opinion is communicated in writing to the Provider, the Provider shall either do all acts and things to render new material non-infringing without affecting any of the Provider's other duties and obligations under this agreement, or obtain a licence from the third party granting the Customer the right to continue using new material that infringes;

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 Provider will upon request supply replacements copies of the lost material, subject to the Customer paying his then prevailing charges.

12. Confidentiality

12.1 During the term of this agreement and after termination or expiration of this agreement for any reason for a period of 2 years starting on the signature of the web services agreement, the following obligations shall apply to the party disclosing confidential information ('the Disclosing Party') to the other party ('the Receiving Party').

12.2 Subject to clause 12.3, the Receiving Party:

12.2.1 may not use any confidential information for any purpose other than the performance of his obligations under this agreement;

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

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

12.3 The obligations of confidence referred to in the provisions of this clause shall not apply to any confidential information that:

12.3.1 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 before its receipt by the Receiving Party;

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

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

12.3.4 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 other party to this agreement in respect of it and who imposes no obligations of confidence upon the Receiving Party.

12.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which he may be entitled.

12.5 The obligations of the parties under the provisions of this clause shall survive the expiry or the termination of this agreement for whatever reason.

13. Term

This agreement shall continue for the Initial Period and thereafter shall automatically continue for successive 12 month periods (each 'a renewal period') on the same terms and conditions unless and until terminated in accordance with the provisions of clause 14.

14. Termination

14.1 A party ('the Initiating Party') may terminate this 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 clause 14.2.

14.2 The events are:

14.2.1 the Breaching Party committing a material breach of the agreement and failing to remedy the breach within 30 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;

14.2.2 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 this agreement);

14.2.3 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;

14.2.4 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.

14.3 This agreement may be terminated by the Customer upon giving not less than 90 days' notice to the Provider, such notice to expire on the last day of the Initial Period or the last day of any renewal period.

14.4 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 this agreement on 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.

14.5 Termination of this agreement for whatever reason shall not affect either:

14.5.1 the accrued rights and liabilities of the parties arising in any way out of this agreement as at the date of termination and in particular but without limitation the right to recover damages against the other; or

14.5.2 provisions expressed to survive this agreement, which shall remain in full force and effect.

15. Non-solicitation of Staff

The Customer agrees that during the term of this agreement and for an additional period of 2 years after termination, 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.

16. Force Majeure

16.1 Neither party shall be deemed to be in breach of this agreement or otherwise liable to the other party for any delay in performance or any non-performance of any obligations under this 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 or circumstance beyond the reasonable control of that party ('an event of force majeure').

16.2 The party relying on this clause shall promptly notify the other party of the nature and extent of the circumstances giving rise to the event of force majeure.

16.3 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 Provider may give notice to the party terminating this agreement. The notice to terminate must specify the termination date, which must be not less than 30 days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this agreement will terminate on the termination date set out in the notice. Neither party shall have any liability to the other in respect of termination of this agreement due to an event of force majeure, but rights and liabilities that have accrued before termination shall not be affected.

17. Waiver

17.1 A waiver of any term, provision or condition of this 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.

17.2 No failure or delay on the part of any party in exercising any right, power or privilege under this agreement 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.

17.3 No breach of any provision of this agreement shall be waived or discharged except with the express written consent of the parties.

18. Notices

18.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by this agreement shall be in writing and shall be delivered personally or sent by fax or prepaid first class post (air mail if posted to or from a place outside the United Kingdom):

in the case of the Customer to: the address set out in the Web Services Agreement and in the case of the provider; Blue Cow Digital Limited, 11b Houghton St, Southport, PR9 0NS.

and shall be deemed to have been duly given or made as follows:

18.1.1 if personally delivered, upon delivery at the address of the relevant party,

18.1.2 if sent by first class post, two business days after the date of posting;

18.1.3 if sent by air mail, 5 working days after the date of posting; and

18.1.4 if sent by fax, when despatched;

provided that if, in accordance with the above provision, any notice, demand or other communication would otherwise be deemed to be given or made after 1600 hours, it shall be deemed to be given or made at the start of the next business day.

18.2 A party may notify the other party to this agreement of a change to his name, relevant addressee, address or fax number for the purposes of the above clause provided that such notification shall only be effective on:

18.2.1 the date specified in the notification as the date on which the change is to take place; or

18.2.2 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.

19. Invalidation and Severability

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

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

19.1.2 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.

19.2 If any provision of this agreement is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from this agreement and shall be deemed to be deleted from this agreement 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.

20. Entire Agreement and Variation

20.1 This 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 this agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this agreement save for any representation made fraudulently.

20.2 Unless otherwise expressly provided elsewhere in this agreement, this agreement may be varied only by a document signed by both of the parties.

21. Assignment

21.1 Subject to the provisions of clause 21.2 the Customer shall not shall assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this 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 Provider shall be entitled to assign, transfer, sub-contract, or in any other manner make over to any third party any of the software licensed by him to the Customer at any time.

21.2 The Customer, if a company, shall be entitled without the prior written consent of the Provider to assign, transfer, sub-contract or in any manner make over the benefit or burden of this 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 the Customer under the provisions of this agreement being assigned, transferred or otherwise made over.

22. Relationship of the Parties

Nothing in this 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.

23. Governing Law and Jurisdiction

23.1 This 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.

23.2 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 this agreement and to enforce any judgement against their respective assets.

24. Exclusion of third party rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this 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.

SOCIAL MEDIA MARKETING AGREEMENT TERMS AND CONDITIONS

These are the terms and conditions relating to the provision Social Media Marketing agreed in the Web Services Agreement between the Company and the Client as defined below

BETWEEN:

- (1) Blue Cow Digital Limited a company registered in England and Wales under number 12130493 whose registered office is at 11b Houghton Street, Southport, PR9 0NS ("the Company") and
- (2) The Company or Partnership named in the social media marketing services agreement ("the Client")

WHEREAS:

- (1) The Client wishes to improve its presence on social media.
- (2) The Company is engaged in the business of providing social media marketing services.
- (3) The Client hereby engages the Company and the Company hereby accepts such engagement to provide the Social Media Marketing Services as described herein, subject to and in accordance with the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In these Terms and conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Business Day"	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England between 9am and 5pm except occasionally when closed for training or similar;
"Client Materials"	means any and all materials, including but not limited to Photographs, Video, Quotes, Sales materials, technical specifications, which the Client may provide to the Company for use in its provision of the Social Media Marketing Services;
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with these Terms and conditions (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Intellectual Property Rights"	means (a) any and all rights in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights), trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions; (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a); (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and (d) the right to sue for past infringements of any of the foregoing rights;
"Initial Fee"	means the fee payable for the Initial Period of Social Media Marketing Services provision in accordance with Clause 6;
"Per-Period Fee"	means the fee payable for each Subsequent Period of Social Media Marketing Services provision in accordance with Clause 6;
"Period"	means either the Initial Period or a Subsequent Period, as defined in sub-Clause 2.2;
"Required Information"	means information concerning the Client's business and business activities required by the Company in order to provide the Social Media Marketing Services, as requested by the company which may include but is not limited to, Logos, background, methods of working, advertising aims;
"Required Materials"	means materials, including but not limited to Photographs, Video, Quotes, Sales materials, technical specifications, required by the Company in order to provide the Social Media Marketing Services;

"Social Media Content" means any and all content, including but not limited to Posts, Tweets, Chats, Blogs, created by the Company for publication on social media in the course of providing the Social Media Services under this Agreement; and

"Social Media Marketing Services" means the social media marketing services to be provided by the Company to the Client in accordance with these Terms and conditions of the Agreement;

"the Agreement" means the Web services Agreement specifically in relation to social media marketing services which you sign or accept by email detailing company information, initial period and Fees for these services, in accordance with the terms and conditions of the Agreement, detailed herein.

1.2 Unless the context otherwise requires, each reference in these terms and conditions to:

1.2.1 "writing", and any similar expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 "these Terms and conditions" is a reference to these Terms and conditions as amended or supplemented at the relevant time;

1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and conditions.

1.2.5 a "Party" or the "Parties" refer to the parties to this Agreement and these Terms and conditions.

1.3 The headings used in these Terms and conditions are for convenience only and shall have no effect upon the interpretation of these Terms and conditions.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations.

2. Engagement of the Company

2.1 The Client hereby engages the Company to provide the Social Media Marketing Services.

2.2 The Agreement shall enter into force on the date the agreement is signed "the Agreement date" and the Company shall commence the provision of the Social Media Marketing Services within 4 weeks of the agreement date, to be determined as required ("the Commencement Date"). The Company shall provide the Social Media Marketing Services for an Initial Term as specified in the Agreement unless left blank, in which case the term will be 24 months, (the "Initial Period"). The Agreement may be cancelled by offering 3 months notice before the end of the initial period or the Subsequent Period in accordance with clause 12.3. If it is not cancelled the contract will automatically renew for Subsequent Terms of 12 months until such notice is received (each a "Subsequent Period") following the end of the Initial Term (collectively constituting the "Term" of the Agreement).

3. Provision of the Social Media Marketing Services

3.1 With effect from the Commencement Date, the Company shall, throughout the Initial Period and any and all agreed Subsequent Periods, provide the Social Media Marketing Services to the Client.

3.2 The Company shall provide the Social Media Marketing Services with reasonable skill and care, commensurate with prevailing standards in the social media marketing industry in the United Kingdom.

3.3 The Company shall act in accordance with these Terms and conditions of the Agreement herein and with all reasonable instructions given to it by the Client provided that such instructions are compatible with the scope of this Agreement and the reasonable supply of Social Media Marketing Services. Reasonable supply to be defined by the Company based on normal work carried out for all clients.

3.4 The Company shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Social Media Marketing Services.

3.5 The Company shall use all reasonable endeavours to accommodate any reasonable changes to the Social Media Marketing Services that may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the fees payable that may be due as a result of such changes.

4. The Social Media Marketing Services

4.1 The Company shall provide the Social Media Marketing Services as described in this Clause 4.

4.2 The Client currently has an active presence or wishes to establish an active presence on the social media platforms listed in the Agreement:

4.3 The Company shall ensure that regular activity takes place on all of the

- social media platforms listed above in sub-Clause 4.2.
- 4.4 The Company requires the Client's access credentials for the social media platforms set out above in order to provide the Social Media Marketing Services. The Client hereby agrees to provide the same before the Commencement Date.
- 4.5 The Client hereby authorises the Company to use the Client's abovementioned access credentials solely for the purposes of providing the Social Media Marketing Services. All such information is hereby designated Confidential Information and shall be treated accordingly, as described under Clause 11.
- 4.6 The Company shall produce and deliver to the Client the following reports detailing the status and progress of the social media marketing activities on each of the abovementioned social media platforms on a monthly report
- 5. The Client's Obligations**
- 5.1 The Company requires the following in order to provide the Social Media Marketing Services:
- 5.1.1 The Required Information about the Client and its day to day business activities, the purpose of social media marketing, any figurehead the business wishes to promote; and
- 5.1.2 The Required Materials for use in Social Media Content.
- 5.2 The Client shall provide the Required Information and the Required Materials to the Company by the 14th day of each month for the following month ("the Delivery Date").
- 5.3 The Company may from time to time require the Client's input or feedback on Social Media Content prior to its publication in the course of the Social Media Marketing Services. The Client shall use all reasonable endeavours to respond with the required feedback within 8 Business Hours.
- 5.4 In the event that any of the Required Information, or any other information supplied by the Client to the Company (including, but not limited to, the access credentials supplied under sub-Clause 4.4) changes and such a change will materially affect the provision of the Social Media Marketing Services by the Company, the Client shall inform the Company of the same without undue delay.
- 5.5 The Company shall not be liable for any delays in the provision of the Social Media Marketing Services that may result from the Client's failure to comply with any of its obligations (or the delivery requirements applying thereto) under this Clause 5 or any other of its obligations arising under these Terms and conditions.
- 6. Fees and Payment**
- 6.1 In consideration of the Social Media Marketing Services the Client shall pay to the Company the Initial Fee as set out in the agreement for the Initial Period. Following the Initial Fee, the Client shall pay to the Company a Per-Period Fee calculated as the annual cost of the Initial Fee to be worked out pro-rata for each Subsequent Period plus an increase of 5% or RPI (whichever is higher).
- 6.2 Payment of the Initial Fee shall be due within 30 days of the date of the Agreement.
- 6.3 Payment of each Per-Period Fee shall be due within 30 days of the date of the Company's invoice for the same which shall be issued within 30 days of the start date of the Subsequent Period to which it relates.
- 6.4 All payments made under the Agreement shall be expressly exclusive of any value added tax chargeable thereon.
- 6.5 The total payment may, subject to prior approval and without prejudice to any rights to the company within these terms and conditions, be paid on a monthly basis by Direct Debit. In this case the minimum payment agreed to would automatically be the sum of the Fee divided by the period it related to.
- 6.6 In the event of a rejected Direct Debit the entire outstanding fee becomes immediately payable.
- 6.7 Without prejudice to sub-Clause 12.3.1 (termination for non-payment), any sums which remain unpaid following the expiry of the payment periods set out in this Clause 6 shall incur interest on a daily basis at 4% above the base rate of Barclays from time to time until payment is made in full of any such outstanding sums. This provision shall not apply to payments disputed in good faith.
- 7. Intellectual Property Rights**
- 7.1 All Intellectual Property Rights subsisting in the Required Information, Required Materials, and in any other Client Materials shall at all times remain the property of the Client (or its licensors, as appropriate). Nothing in these Terms and conditions shall vest any rights in any material provided by, or otherwise belonging to the Client (or its licensors, as appropriate) in the Company. The Client hereby grants to the Company a limited, non-exclusive, non-transferable, revocable, worldwide licence to use any and all Required Information, Required Materials and any other Client Materials for the purposes of providing the Social Media Marketing Services in accordance with these Terms and conditions.
- 7.2 Upon receipt in full by the Company of all sums due for a given Period under Clause 6, the copyright and any and all other Intellectual Property Rights subsisting in the Social Media Content created by the Company during that Period shall be assigned to the Client and the Company shall be deemed to

have waived any and all moral rights in respect of the same. The Company shall execute all documents and take all actions necessary or reasonably requested by the Client to document, obtain, maintain, perfect or assign its rights in such content.

8. Indemnity

- 8.1 The Client (as an "Indemnifying Party") hereby undertakes to indemnify the Company (as an "Indemnified Party") and to keep the Company at all times fully indemnified from and against all losses arising as a result of any action or claim that the Company's use of any Required Information, Required Materials or other Client Materials in the course of providing the Social Media Marketing Services constitutes an infringement of any Intellectual Property Rights belonging to a third party.
- 8.2 In the event of an action or claim arising as under sub-Clauses 8.1, the Indemnifying Party shall have complete control over the litigation and/or settlement of the action or claim and shall keep the Indemnified Party fully informed of the same at reasonable intervals.
- 8.3 In the event of an action or claim arising as under sub-Clauses 8.1, the Indemnified Party shall:
- 8.3.1 Notify the Indemnifying Party immediately in writing upon becoming aware of the action or claim;
- 8.3.2 Make no admissions or attempt any settlements of the action or claim without the express written consent of the Indemnifying Party;
- 8.3.3 Provide the Indemnifying Party with all reasonable information and assistance reasonably required by the Indemnifying Party, at the Indemnifying Party's cost, with respect to the action or claim; and
- 8.3.4 Allow the Indemnifying Party complete control over the litigation and/or settlement of the action or claim.

9. Warranties

- 9.1 Each Party hereby warrants to the other that it has the full power and authority to enter into the Agreement, these Terms and conditions and to perform its respective obligations hereunder.
- 9.2 The Client represents, warrants, undertakes and agrees with the Company that the Required Materials and any other Client Materials shall be original to the Client (or that, where any Required Materials or other Client Materials are provided by a third party, it has received the necessary consents or permissions to use the same) and shall not infringe any Intellectual Property Rights belonging to a third party.
- 9.3 The Client represents, warrants, undertakes and agrees with the Company that the Required Materials and other Client Materials shall not, under the laws of England and Wales, be obscene, blasphemous, offensive to religion, or defamatory of any person and shall not contain any material that has been obtained in violation of the Data Protection Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Official Secrets Act 1989, or any similar domestic or foreign legislation and nothing contained in the Required Materials or other Client Materials will, if published, constitute a contempt of court.

10. Limitation of Liability

- 10.1 Subject to sub-Clause 10.2, neither Party shall be liable to the other for any loss of profit, indirect, special or consequential loss or damages.
- 10.2 Nothing in these Terms and conditions shall exclude or limit either Party's liability for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation, any breach of Clause 11, the indemnities in sub-Clause 8.1, or other form of liability that cannot be excluded or limited by law.
- 10.3 Subject to sub-Clause 10.1 and 10.2, each Party's total liability to the other in respect of any claims arising out of, or in connection with, the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed the total sums paid or payable by the Client to the Company in the 6 months prior to the claim, or £1,500 (One thousand and five hundred Pounds), whichever is greater.

11. Confidentiality

- 11.1 Each Party undertakes that, except as provided by sub-Clause 11.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for 2 years after its termination or expiry:
- 11.1.1 keep confidential all Confidential Information;
- 11.1.2 not disclose any Confidential Information to any other party;
- 11.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of these Terms and conditions;
- 11.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
- 11.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 11.1.1 to 11.1.4 above.
- 11.2 Either Party may:
- 11.2.1 disclose any Confidential Information to:
- 11.2.1.1 any governmental or other authority or regulatory body; or

- 11.2.1.2 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies; to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the provision of the Social Media Marketing Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 11.2.1.1 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 11, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
- 11.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.
- 11.3 The provisions of this Clause 11 shall continue in force in accordance with their terms for a period of 2 years after the termination or expiry of the Agreement, notwithstanding the termination of the Agreement for any reason.
- 12. Term and Termination**
- 12.1 The Agreement and these Terms and conditions shall enter into force on the agreement date and shall continue for an Initial Term of 24 months. The Agreement will be renewed by for Subsequent Terms of 12 months following the end of the Initial Term. As described in sub-Clause 2.2, all such periods shall collectively constitute the Term of the Agreement and these Terms and conditions.
- 12.2 The Company may terminate this agreement at any time by giving 1 months' notice to the Client for any reason.
- 12.3 The Client may terminate this Agreement no sooner than four months before the end of the Initial or Subsequent term (specific to the one they are in) by giving 3 months written notice, not to expire before the end of that Initial or Subsequent term.
- 12.4 Without prejudice to any other right or remedy available to it, either Party may terminate this Agreement forthwith by giving written notice to the other Party in the following circumstances:
- 12.4.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 20 Business Days of the due date for payment;
- 12.4.2 the other Party commits any other breach of any of the provisions of the Agreements terms and conditions and, if the breach is capable of remedy, fails to remedy it within 30 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 12.4.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
- 12.4.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 12.4.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
- 12.4.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
- 12.4.7 that other Party ceases, or threatens to cease, to carry on business
- 12.5 The Company may terminate the agreement if the Client is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 12, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010
- 12.6 The Client may not terminate the agreement if the Client is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 12, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010
- 12.7 For the purposes of sub-Clause 12.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 13. Effects of Termination**
- Upon the termination or expiry of the Agreement for any reason:
- 13.1 any sum owing by either Party to the other under any of the provisions of these terms and conditions shall become immediately due and payable;
- 13.2 all licences granted to the Company by the Client to use the Required Information, Required Materials, any and all other Client Materials shall terminate immediately;
- 13.3 the Company shall, at the Client's request, either promptly return or destroy all Required Information, Required Materials, and other Client Materials in its possession and/or control and shall issue a certificate of such return and/or destruction;
- 13.4 each Party shall (except to the extent referred to in Clause 11) immediately cease to use, either directly or indirectly, any Confidential Information belonging to the other Party (including, but not limited to, the Client's access credentials as referenced in sub-Clauses 4.4 and 4.5 and shall at the other Party's request, either promptly return or destroy all such Confidential Information in its possession and/or control and shall issue a certificate of such return and/or destruction);
- 13.5 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 13.6 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement and its terms and conditions which existed at or before the date of termination; and
- 13.7 subject as provided in this Clause 13 and except in respect of any accrued rights neither Party shall be under any further obligation to the other.
- 14. Force Majeure**
- 14.1 Neither Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 14.2 In the event that the Company cannot perform their obligations hereunder as a result of force majeure for a continuous period of 3 months, the other Party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all work completed up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.
- 15. No Waiver**
- No failure or delay by either Party in exercising any of its rights under these terms and conditions shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of these terms and conditions shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 16. Further Assurance**
- Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of these terms and conditions into full force and effect.
- 17. Costs**
- Subject to any provisions to the contrary each Party to the Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of these terms and conditions.
- 18. Assignment and Sub-Contracting**
- 18.1 Subject to sub-Clause 18.2 The client may not assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 18.2 Each Party shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Party in question.
- 19. Relationship of the Parties**
- Nothing in the Agreement or these terms and conditions shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.
- 20. Notices**
- 20.1 All notices under these terms and conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 20.2 Notices shall be deemed to have been duly given:
- 20.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 20.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or
- 20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

20.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, notified to the other Party.

21. **Entire Agreement**

21.1 These terms and conditions contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

21.2 Each Party acknowledges that, in entering into the Agreement and accepting these terms and conditions, it does not rely on any representation, warranty, assurance or other provision (made innocently or negligently) except as expressly provided in these terms and conditions.

22. **Severance**

In the event that one or more of the provisions of the Agreement or its terms and conditions herein is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement or its terms and conditions. The remainder of the Agreement or its terms and conditions shall be valid and enforceable.

23. **Alternative Dispute Resolution**

23.1 Any dispute or difference arising between the Parties relating to the Agreement or its subject matter shall be referred to a single arbitrator to be agreed upon by the Parties or, failing such agreement, to be appointed by the then President of the Law Society, such arbitrator to have all of the powers conferred upon arbitrators by the laws of England and Wales.

23.2 The Parties hereby agree that the decision of the Arbitrator shall be final and binding on both Parties.

24. **Law and Jurisdiction**

24.1 The Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

24.2 Subject to the provisions of Clause 23, any dispute, controversy, proceedings or claim between the Parties relating to terms and conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

SEO SERVICE AGREEMENT TERMS AND CONDITIONS

These are the terms and conditions relating to the provision Social Media Marketing agreed in the Social Media Marketing Agreement between the Company and the Client as defined below

BETWEEN:

- (1) Blue Cow Digital Limited a company registered in England and Wales under number 12130493 whose registered office is at 11b Houghton Street, Southport. PR9 0NS ("the Company") and
- (2) The Company or Partnership named in the social media marketing services agreement ("the Client")

WHEREAS:

- (1) At all material times the Company is engaged in the business of providing search engine optimisation ("SEO") services.
- (2) The Client wishes to improve the search engine rankings of their website, ("the Website").
- (3) The Company hereby agrees to provide its services to the Client subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Audit Report"	means a report setting out the current status of the Website with respect to SEO and search engine rankings;
"Business Day"	means any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
"Competition Report"	means a report providing details of factors including, but not limited to, competing websites' search engine rankings;
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to, or in connection with, this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Designated Search Engines"	means the search engines on which the Company shall apply the SEO Services with a view to improving the ranking of the Website as defined in Schedule 1;
"Early Termination Fee"	means the outstanding monthly contractual payments from the point of Early Termination until the end of the initial term as defined on the Company Web Services Agreement, plus 3 months notice, plus any additional fees outstanding, plus a £100 administration fee. means the consideration payable to the Company for the SEO Services as defined in Clause 5;
"Fee"	
"Initial Fee"	means where applicable the first sum payable to the Company under Clause 5 prior to the payment of the Milestone Payments;
"Intellectual Property Rights"	means (a) any and all rights in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions; (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a); (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and (d) the right to sue for past infringements of any of the foregoing rights;
"Keyword Report"	means a report detailing the Company's recommendations for keywords to be included in the Website [and additional keyword campaigns];
"Milestone Payment(s)"	means where applicable the sums payable to the Company for each of the project milestones set out in sub-Clause 4.4;
"Required Information"	means the information which the Client must supply to the Company to enable the Company to carry out the SEO Services as defined in Schedule 1;
"SEO Services"	means the SEO services to be provided by the Company to the Client in accordance with the terms and conditions of this Agreement as defined in Schedule 1; and
"Website SEO"	means the application of the SEO services to the Website including, but not limited to, the editing of the Website.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 "this Agreement" is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to this Agreement;
 - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule; and
 - 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.
 - 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
 - 1.4 Words imparting the singular number shall include the plural and vice versa.
 - 1.5 References to any gender shall include the other gender.
- 2. Engagement of the Company**
- 2.1 The Client hereby engages the Company to provide the SEO Services.
 - 2.2 The Company shall complete the SEO Services either within 3 months or a date specified on the Web services agreement, which ever is longer ("the Completion Date").
 - 2.3 The Client shall provide the Required Information to the Company within 24 hours of a request by the company ("the Delivery Date"). In the event that the Client fails to deliver the Required Information on the Delivery Date, the Completion Date shall increment by one day for each day that the delivery of the Required Information is delayed.
- 3. Nature of Engagement**
- 3.1 The Company shall at all times be responsible for organising how and in what order the SEO Services are performed and shall liaise with the Client (or the Client's representative) to ensure that due account is taken of the impact of the timing of the SEO Services to be performed upon the activities of the Client and any other contractors, consultants and similar third parties also engaged by the Client.
 - 3.2 The engagement under this Agreement is mutually non-exclusive and the Company shall be entitled, at its own expense, to subcontract the performance of the SEO Services.
 - 3.3 The engagement and appointment of the Company under this Agreement does not create any mutual obligations on the part of the Client or the Company to offer or accept any further engagement and no continuing relationship shall hereby be created or implied.
- 4. The SEO Services**
- 4.1 The Company shall provide the SEO Services specified in Schedule 1 in accordance with this Agreement and in particular Clause 2.
 - 4.2 The Company shall not incur any charges to the Client including, but not limited to, the setting up of pay-per-click campaigns, without the prior written agreement and authorisation of the Client.
 - 4.3 The Website SEO shall be performed directly and all changes to the Website shall be uploaded directly to the host server via FTP. The Client shall provide the required access credentials including, but not limited to FTP details, immediately on request
 - 4.4 The Client understands and acknowledges the following:
 - 4.4.1 The times for websites to appear on search engine listings vary and the Company can thus not guarantee that the Website will appear immediately on the Designated Search Engines or that its position will change immediately from that which it held prior to the SEO Services being performed.
 - 4.4.2 The Company cannot control search engines and cannot provide any guarantee that any of the Designated Search Engines will not change their policies or functionality in such a way that will have a detrimental effect on the ranking of the Website following the completion of the SEO Services.
 - 4.4.3 The Company accepts no responsibility for any detrimental effect on the Website's search engine rankings which results from any activity of the Client or any third party including, but not limited to, alterations to the Website.
 - 4.4.4 The Company makes no guarantee that the SEO Services will result in the Website appearing in the top 10 search results on the Designated Search Engines.
- 5. Consideration**
- 5.1 In consideration of the SEO Services the Client shall pay to the Company the Fee as set out in the Company's web services agreement.
 - 5.2 Payment of the Fees shall be made monthly in advance.
 - 5.3 All payments made under this Agreement shall be expressly exclusive of any value added tax chargeable thereon.
- 6. Intellectual Property**
- 6.1 Upon receipt in full by the Company of all sums due under Clause 5, the copyright and any and all other Intellectual Property Rights subsisting in any and all materials created by the Company in the course of providing the SEO Services shall be deemed to be assigned to the Client and the Company shall be deemed to have waived all moral rights in respect of such work arising out of Chapter IV of the Copyright Designs and Patents Act 1988.
 - 6.2 The Company further warrants that any and all Intellectual Property Rights subsisting in any and all materials created for or on behalf of the Company by third party consultants, contractors, sub-contractors or similar, shall be assigned to the Company by such third parties and will, where relevant, be subject to the requirements of sub-Clause 6.1.
 - 6.3 Nothing in this Agreement shall vest any rights in the Website in the Company and sub-Clause 6.1 shall effect the assignment of any Intellectual Property Rights which may arise to the benefit of the Company in the Website to the Client.

7. Company's Warranties and Indemnity

- 7.1 The Company represents, warrants, undertakes, and agrees with the Client as follows:
- 7.1.1 the work produced in the course of the SEO Services shall be original to the Company and shall not infringe any copyright, other Intellectual Property Rights, moral rights, rights of privacy, rights of publicity, or any other rights whatsoever of any person;
 - 7.1.2 the work produced in the course of the SEO Services shall not, under the laws of England and Wales be obscene, blasphemous, offensive to religion, or defamatory of any person and shall not contain any material which has been obtained in violation of the Data Protection Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Official Secrets Act 1989, or any analogous domestic or foreign legislation and nothing contained in the work will, if published, constitute a contempt of court;
 - 7.1.3 the Company shall not assign, licence, transfer, encumber or otherwise dispose of any rights of copyright or any other rights in or to the work produced in the course of the SEO Services except pursuant to this Agreement and shall not enter into any agreement or arrangement which might conflict with the Client's rights under this Agreement or might interfere with the Company's performance of its obligations under this Agreement;
 - 7.1.4 Subject to sub-Clause 7.2 the Company hereby undertakes to indemnify the Client and keep the Client at all times fully indemnified from and against all actions, proceedings, claims, demands, costs (including without prejudice to the generality of this provision the legal costs of the Client on a solicitor and own-client basis), awards, or damages howsoever arising – directly or indirectly – as a result of any breach or non-performance by the Company of any of the Company's undertakings, warranties, or obligations under this Agreement.
- 7.2 The total liability of the Company under this Agreement shall be limited to no more than 25% of monies received, directly relating to SEO, from the Client during the calendar year of any claim.

8. Client's Warranties and Indemnity

- 8.1 The Client represents, warrants, undertakes, and agrees with the Company as follows:
- 8.1.1 the Website shall be original to or otherwise owned by the Client and shall not infringe any copyright, other Intellectual Property Rights, moral rights, rights of privacy, rights of publicity, or any other rights whatsoever of any person;
 - 8.1.2 the Website shall not, under the laws of England and Wales be obscene, blasphemous, offensive to religion, or defamatory of any person and shall not contain any material which has been obtained in violation of the Data Protection Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Official Secrets Act 1989, or any analogous domestic or foreign legislation and nothing contained in the Website will constitute a contempt of court;
 - 8.1.3 the Client shall not enter into any agreement or arrangement which might conflict with the Company's rights under this Agreement or might interfere with the Company's performance of its obligations under this Agreement;
 - 8.1.4 The Client hereby undertakes to indemnify the Company and keep the Company at all times fully indemnified from and against all actions, proceedings, claims, demands, costs (including without prejudice to the generality of this provision the legal costs of the Company on a solicitor and own-client basis), awards, or damages howsoever arising – directly or indirectly – as a result of any breach or non-performance by the Client of any of the Client's undertakings, warranties, or obligations under this Agreement.

9. Confidentiality

- 9.1 Both Parties undertake that, except as provided by sub-Clause 9.2 or as authorised in writing by the other Party, they shall at all times during the continuance of this Agreement and for 12 after its termination:
- 9.1.1 keep confidential all Confidential Information;
 - 9.1.2 not disclose any Confidential Information to any other party;
 - 9.1.3 not use any Confidential Information for any purpose other than as contemplated by this Agreement;
 - 9.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 9.1.5 ensure that (as applicable) none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of this Clause 9.
- 9.2 Subject to sub-Clause 9.3, either Party may disclose any Confidential Information to:
- 9.2.1 any of their sub-contractors, substitutes, or suppliers;
 - 9.2.2 any governmental or other authority or regulatory body; or
 - 9.2.3 any of their employees or officers or those of any party described in sub-Clauses 9.2.1 or 9.2.2;
- 9.3 Disclosure under sub-Clause 9.2 may be made only to the extent that is necessary for the purposes contemplated by this Agreement, or as required by law. In each case the disclosing Party must first inform the recipient that the Confidential Information is confidential. Unless the recipient is a body described in sub-Clause 9.2.2 or is an authorised employee or officer of such a body, the disclosing Party must obtain and submit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 9.4 Either Party may use any Confidential Information for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of that Party.
- 9.5 When using or disclosing Confidential Information under sub-Clause 9.4, the disclosing Party must ensure that it does not disclose any part of that Confidential Information which is not public knowledge.
- 9.6 The provisions of this Clause 9 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

10. Termination

- 10.1 The Client may terminate this Agreement by giving to the other not less than 3 months written notice after the initial period as defined on the order form.
- 10.2 The Company may terminate this agreement at any time and without reason by providing the Client with 1 months written notice.
- 10.3 Without prejudice to the generality of sub-Clause 10.1 and 10.2, this Agreement shall terminate, notwithstanding any other rights and remedies the Parties may have, in the following circumstances:

- 10.3.1 either Party fails to comply with the terms and obligations of this Agreement and such failure, if capable of remedy, is not remedied within 2 weeks of written notice of such failure from the other Party.
- 10.3.2 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
- 10.3.3 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 10.3.4 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on the other Party under this Agreement);
- 10.3.5 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
- 10.3.6 the other Party ceases, or threatens to cease, to carry on business; or
- 10.3.7 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 10, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 10.4 The termination of this Agreement shall be without prejudice to any rights which have already accrued to either of the Parties under this Agreement.
- 10.5 In the case of the Client failing to comply with this Agreement as described in the sub clause 10.3 they will be required to pay the early termination fee as described in Definitions and Interpretations; "Early Termination Fee".

11. Nature of the Agreement

- 11.1 The Client may not assign, mortgage, or charge (otherwise than by floating charge) or sub-license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of the Company, such consent not to be unreasonably withheld.
- 11.2 The Company may assign, mortgage, or charge (otherwise than by floating charge) or sub-license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder as it sees fit.
- 11.3 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 11.4 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 11.5 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

12. Severance

The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

13. Notices

- 13.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 13.2 Notices shall be deemed to have been duly given:
 - 13.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 13.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated;
 In each case notices shall be addressed to the most recent address or e-mail address, notified to the other Party.

14. Alternative Dispute Resolution

- 14.1 Any dispute or difference arising between the Parties relating to this Agreement or its subject matter shall be referred to a single arbitrator to be agreed upon by the Parties or, failing such agreement, to be appointed by the then President of the Law Society, such arbitrator to have all of the powers conferred upon arbitrators by the laws of England and Wales.
- 14.2 The Parties hereby agree that the decision of the Arbitrator shall be final and binding on both Parties.

15. Law and Jurisdiction

- 15.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 15.2 Subject to the provisions of Clause 14, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

WEBSITE DESIGN, DEVELOPMENT, AND HOSTING AGREEMENT

These are the terms and conditions relating to the supply of website design, development and hosting services agreed in the web services Agreement between the Company and the Client as defined below

BETWEEN:

- (1) Blue Cow Digital Limited a company registered in England and Wales under number 12130493 whose registered office is at 11b Houghton Street, Southport. PR9 0NS (“the Developer”) and
- (2) The Company or Partnership named in the Web Services Agreement (“the Client”)

RECITALS:

- (1) The Customer has launched OR intends to launch a website on the Internet and is wholly dependent on the provision of support services by the Provider to the Site.
- (2) The Customer has agreed to procure and the Provider to supply support services upon the following terms and conditions.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Acceptance Retests”	means the retests to be carried out in the event of Defects as set out in Clause 6;
“Acceptance Tests”	means the tests to be carried out on the Website as set out in Clause 6;
“Business Day”	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
“Client Site Materials”	means any and all content provided by the Client to the Developer for incorporation into the Website;
“Commencement Date”	means the date of signature on the Web Services Agreement
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Data Protection Legislation”	means the Data Protection Act 2018 and (for so long as and to the extent that EU law has legal effect in the UK) EU Regulation 2016/679 General Data Protection Regulation (the GDPR) and any other directly applicable EU regulation pertaining to privacy;
“personal data” “data subject” “data controller” “data processor” and “personal data breach”	shall each have the meaning defined in Article 4 of the GDPR;
“Defect Report”	means a report of Defects compiled by the Developer as described in sub-Clause 6.3;
“Defect”	means any failure in the Website that causes it to fail any part of the Acceptance Tests;
“Developer Site Materials”	means any and all content provided or created by the Developer for incorporation into the Website;
“Hosting Fees”	means the sums to be paid by the Client to the Developer for the hosting services, as agreed by the Parties, as set out in the Web Services Agreement;
“Hosting Specification”	means a document setting out the particulars of the hosting services that the Client requires the Developer to provide which will be as standard unless expressly set out in the Quote;

“Intellectual Property Rights”	means patents, rights to inventions, copyright and related rights (including moral rights), trade marks, business names, domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets) and all other intellectual property rights, 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 or protection which either subsist or will subsist now or in the future in any part of the world;
“Non-Developer Defect”	means any failure in the Website that causes it to fail any part of the Acceptance Tests that has been caused by an act or omission of the Client, or by any other party associated with the Client for whom the Developer has no responsibility;
“Project Fees”	means the sums to be paid by the Client to the Developer for the Developer’s Services, as agreed by the Parties, as set out the Web Services Agreement;
“Project Manager”	means a Project Manager appointed by either Party under sub-Clause 4.1;
“Project Milestone”	means one of multiple phases that the design and development of the Website shall be divided into, as set out in the Project Specification where applicable;
“Project Specification”	means an overview setting out in detail the work which the Client requires the Developer to perform which will form part of the quote;
“Quote”	means the sales quote provided to the client which will have a reference number which will be added to the Web Services Agreement.
“Retest Period”	means the period within which the Acceptance Retests shall be carried out, as specified in sub-Clause 6.7;
“Server”	means a web server operated and administered by the Developer;
“Services”	means the website design and development services to be provided by the Developer to the Client pursuant to this Agreement;
“Testing Period”	means the period within which the Acceptance Tests shall be carried out, as specified in sub-Clause 6.1;
“User Content”	means any and all content uploaded or otherwise submitted to the Website by its users; and
“Website”	means the website at the URL specified by the Client to be designed, developed, and hosted by the Developer pursuant to this Agreement.
“Web Services Agreement” “Contract”	means the Web Services Agreement signed by the Client agreeing to the services, length of initial contract and monthly price and these and any other relevant terms and conditions for services provided.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time and shall include all subordinate legislation made from time to time;
 - 1.2.3 “this Agreement” is a reference to these Terms and conditions of the Web Services Agreement and each of the Schedules as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to this Agreement;
 - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule; and
 - 1.2.6 a “Party” or the “Parties” refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include any other gender.

1.6 References to persons shall include corporations.

2. Scope of Services, Project Specification, and Client Site Materials

- 2.1 The Parties have prepared and agreed upon the Project Specification and Hosting Specification for the Website as set out in the Quote.
- 2.2 The Developer shall provide the Services which shall include the design, development, and delivery of the Website in accordance with the Project Specification and in accordance with the Project Milestones set out therein.
- 2.3 The Developer shall host the Website on the Server in accordance with the Hosting Specification.
- 2.4 Either Party may request or propose amendments to the Project Specification and/or to the Hosting Specification. Any proposed amendments must be made in writing.
- 2.5 Within 10 Business Days of receipt of a request or proposal under sub-Clause 2.4, the Developer shall notify the Client in writing of the terms upon which such amendments are to be accommodated, including the effect on the Project Fees, the Project Specification, the Hosting Fees, and/or the Hosting Specification.
- 2.6 Within 10 Business Days of receipt of the Developer's notice under sub-Clause 2.5, the Client shall notify the Developer in writing of its acceptance of the Developer's changes to the Project Fees, Project Specification, Hosting Fees, and/or Hosting Specification, or shall request a meeting with the Developer to discuss the same further.
- 2.7 The Client Site Materials shall be provided by the Client in accordance with the Project Specification, following the completion and acceptance of the Website as determined by the Client, or as requested by the Developer as under sub-Clause 3.1, as applicable.
- 2.8 The Developer shall include the following promotional statement on the home page of the Website for a period of 20 (Twenty) years: "Website Designed and Developed by Blue Cow Digital", this may at the Developers absolute discretion be accompanied by one, some or all of the following, the developers logo, a link to the developers website, a link to a case study, a phone number and/or email address.

3. Client's Responsibilities

- 3.1 The Client shall promptly, at the Developer's request, provide the Developer with any and all information, data, documentation, and Client Site Materials that the Developer reasonably requires in order to perform its obligations under this Agreement.
- 3.2 The Client shall be fully responsible for the Client Site Materials and for the content, accuracy, and completeness thereof and shall indemnify the Developer against any and all damages, losses, and expenses arising as a result of any claims or proceedings on the grounds that the Client Site Materials contain any material that is unlawful or otherwise offensive (including, but not limited to, material that is obscene, pornographic, offensive, defamatory, threatening, incites violence, or that breaches the Intellectual Property Rights of any third party).
- 3.3 The Client hereby acknowledges that the Developer's ability to perform its obligations under this Agreement is dependent on the Client's full and timely cooperation and the Client hereby agrees to provide the same.

4. Project Management and Reporting

- 4.1 For the duration of the design and development of the Website (that is, until the Website is deemed accepted by the Client under sub-Clause 6.9 or 6.10), each Party shall appoint a Project Manager who shall be responsible for liaising with the other Party on all matters under this Agreement. Each Project Manager shall have the necessary knowledge and experience of all relevant matters, and the authority to commit the Party by whom they are appointed.
- 4.2 The Developer shall provide monthly reports on request detailing the progress of the design and development of the Website and where applicable the hosting of the Website. In particular, such reports shall indicate any important matters requiring the Client's attention.

5. Third-Party Software

- 5.1 The Third-Party Software either set out in the quote or subsequently agreed between the parties shall be supplied and incorporated into the Website in accordance with the applicable software licence agreement(s).
- 5.2 The licence fee(s) payable for the Third-Party Software shall form an additional charge over and above the Project Fees payable under Clause 7 unless specifically agreed in writing in the quote.

6. Development, Testing, and Acceptance

- 6.1 Upon completion of the design and development of the Website by the Developer in accordance with the Project Specification and Project Milestone, the Client shall have a 10 Business Day Testing Period during which it shall carry out the Acceptance Tests on the Website **as specified in Schedule 2.**
- 6.2 In the event that the Acceptance Tests are not passed, the Client shall inform the Developer at the end of the Testing Period of all Defects in writing.
- 6.3 Upon receipt by the Developer of the Client's information under sub-Clause 6.2, the Developer shall have a period of 30 Business Days to compile the Client's reports of Defects into a Defect Report which the Developer shall provide to the Client in writing by the end of that period.
- 6.4 Upon receipt by the Client of the Defect Report, the Parties shall agree upon a mutually acceptable time to discuss the Defects and to agree upon solutions and a suitable timetable for implementing such solutions.
- 6.5 In the event that a fault or failure is found to have been caused by an act or omission of the Client, or by any other party associated with the Client for whom the Developer has no responsibility, such a Non-Developer Defect shall not be considered a Defect for the purposes of the Acceptance Tests. If only Non-Developer Defects are present, the Website shall be deemed to have passed the Acceptance Tests and the provisions of sub-Clause 6.9 shall apply.
- 6.6 Defects shall be remedied by the Developer at no additional cost to the Client. The Client may request that the Developer remedy any Non-Developer Defects, however the Developer shall reserve the right to charge the Client in full for such remedial work at its then-current rates for such work and to require full payment of the same in advance.
- 6.7 Where applicable, upon the completion by the Developer of any and all necessary work to remedy Defects identified during the Acceptance Tests, the Client shall have a 10 Business Day Retest Period during which it shall carry out the Acceptance Retests on the Website (or the affected parts thereof, as appropriate).
- 6.8 In the event that the Acceptance Retests are not passed, the Client shall have the following options (all of which shall be without prejudice to the Client's other rights and remedies):
- 6.8.1 to require the Developer to remedy the remaining Defects and to agree upon a suitable timetable and deadline for the completion of that remedial work and subsequent Acceptance Retests. If the Website fails the Acceptance Retests again, the Client may require the repetition of the steps in this sub-Clause 6.8.1 or it may proceed under sub-Clauses 6.8.2 or 6.8.3; or
 - 6.8.2 to accept the Website in its then-current state, subject to a reasonable reduction in the Project Fees payable to the Developer which shall be agreed upon between the Parties in writing within 10 Business Days of the completion of the Acceptance Retests. If the Parties do not agree upon such a reduction within the time limit, the Client shall be entitled to reject the Website in accordance with sub-Clause 6.8.3; or
 - 6.8.3 to reject the Website in its entirety for failure to comply with the Project Specification and this Agreement. This Agreement shall be terminated immediately, and the Developer shall refund to the Client any and all sums already paid by the Client to the Developer under this Agreement within 60 Business Days.
- 6.9 The Website shall be deemed to have been accepted when all Acceptance Tests and (where applicable) Acceptance Retests have been passed and no Defects remain (excluding Non-Developer Defects and any Defects accepted by the Client under sub-Clause 6.8.2). Upon successful completion of the Acceptance Tests, the Client shall confirm the same by means of a Final Project Acceptance Form which it shall return to the Developer without undue delay.
- 6.10 Notwithstanding the foregoing provisions of this Clause 6, the Client shall be deemed to have accepted the Website before the Acceptance Tests and (where applicable) Acceptance Retests have been passed if:
- 6.10.1 the Client uses the Website or any part of it in the course of business other than for testing purposes in accordance with the Acceptance Tests or Acceptance Retests specified in Schedule 2; or
 - 6.10.2 the Acceptance Tests or Acceptance Retests are unreasonably delayed for a period of more than 10 Business Days by the Client without the Developer's written agreement to such a delay and to extend the relevant Testing Period or Retest Period.
- 6.11 Within 5 Business Days of acceptance of the completed Website, the Developer shall begin hosting the Website on its Server.

7. Fees and Payment

- 7.1 The Client shall pay to the Developer the Fees, calculated in accordance with the Quote and the Web Services Agreement respectively, within 14 days of receipt of the Developer's invoice for the same.
- 7.2 Any and all sums invoiced under this Agreement shall be exclusive of VAT.
- 7.3 If the Client fails to make any payment due to the Developer on or by the due date for payment, then, without

prejudice to the Developer's other rights and remedies (including, but not limited to those under Clause 16), the Client shall pay interest on the overdue sum from the due date for payment until the payment of that overdue sum, whether before or after judgment.

- 7.4 Interest under sub-Clause 7.3 shall accrue daily at the rate of 8% per annum above the Bank of England's base rate from time to time, and at 10% per annum for any period when that base rate is below 0%.
- 7.5 If the Client chooses not to pay via Direct Debit then the Developer reserves the right to charge the client a £60 per annum administration fee for non-direct debit payment.

8. Website Hosting and Development

- 8.1 The Developer shall if the client has a Development package; update the Website with any and all Client Site Materials provided to them from time to time by the Client within 5 Business Days of receipt on not more than 3 occasions per calendar month during the term of the web services Agreement.
- 8.2 The Developer shall only update the Website with Client Site Materials. The Developer shall have no control over User Content and shall not be responsible for monitoring the same.
- 8.3 Notwithstanding sub-Clause 8.2, if the Developer reasonably believes that any content on the Website (including, but not limited to User Content and Client Site Materials) is unlawful or otherwise offensive (including, but not limited to, material that is obscene, pornographic, offensive, defamatory, threatening, incites violence, or that breaches the Intellectual Property Rights of any third party), it shall inform the Client immediately of such content and shall remove the same immediately.

9. Intellectual Property

- 9.1 The Client warrants that they have the right to use all Client Site Materials supplied by them to the Developer and that, where applicable, all necessary permissions and rights have been obtained. The Client (or the applicable licensors, as appropriate) shall retain ownership of all Client Site Materials and all Intellectual Property Rights subsisting therein at all times.
- 9.2 The Developer warrants that they have the right to use all Developer Site Materials supplied by them as part of the Website and that, where applicable, all necessary permissions and rights have been obtained.
- 9.3 The Developer shall retain ownership of all Intellectual Property Rights subsisting in the Website until the Project Fees are paid in full by the Client. Upon receipt by the Developer of all sums due, the Developer shall assign the ownership of the same to the Client immediately, and the Parties shall execute all documents necessary to give effect to that assignment.
- 9.4 The Client shall indemnify the Developer against all damages, losses, and expenses arising out of any claims or proceedings brought by a third party for the infringement of the third party's Intellectual Property Rights by any part of the Client Site Materials provided that the Developer:
- 9.4.1 promptly notifies the Client in writing of the claim or proceedings;
 - 9.4.2 makes no admissions or settlements without the Client's prior written consent;
 - 9.4.3 provides the Client with all information and assistance that the Client may reasonably require; and
 - 9.4.4 gives the Client sole authority to defend or settle the claim or proceedings.
- 9.5 The indemnities set out in this Clause 9 shall not apply to the extent that the claims or proceedings in question arise out of the indemnifying Party's compliance with any instructions or materials provided by the indemnified Party.

10. Warranties

- 10.1 Each Party hereby warrants to the other that it has the full power and authority to enter into, and perform its obligations under, this Agreement.
- 10.2 The Developer shall perform its obligations under this Agreement with reasonable care and skill in accordance with generally established and recognised practices and standards prevailing in the website design, development, and hosting industry.
- 10.3 The Developer warrants that the Website shall be free of errors, viruses, and material defects and that it will perform in accordance with the Project Specification for a period of 3 months from the date that acceptance takes place. In the event that the Website does not perform in accordance with the Project Specification, the Developer shall ensure that the Website complies with the Project Specification without undue delay and at no additional cost to the Client.
- 10.4 The warranty provided in sub-Clause 10.3 shall not apply to the extent that any non-conformity with the Project

Specification arises out of modifications made to the Website by the Client or any third-party without the direct involvement of the Developer.

11. Liability

- 11.1 The Developer shall not be liable to the Client for any damage to software or hardware, damage to or loss of data, or for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill, or business opportunity, or for any indirect or consequential loss or damage.
- 11.2 The Client shall not be liable to the Developer for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill, or business opportunity, or for any indirect or consequential loss or damage.
- 11.3 Nothing in this Agreement shall limit either Party's liability under sub-Clause 11.5 or Clause 13 and no sums to be paid thereunder shall count towards the cap on each Party's liability under sub-Clause 11.4.
- 11.4 Subject to sub-Clause 11.3, the Developers' total liability to the other in respect of any claims based on any events in any calendar year arising out of or in connection with this Agreement, whether in contract, tort (including negligence), or otherwise shall not exceed £1000.
- 11.5 Subject to sub-Clause 11.3, the Clients' total liability to the other in respect of any claims based on any events in any calendar year arising out of or in connection with this Agreement, whether in contract, tort (including negligence), or otherwise shall not exceed £10000 plus any outstanding charges owed on the web services agreement.
- 11.6 Nothing in this Agreement shall limit or exclude either Party's liability for death or personal injury caused by that Party's negligence; fraud; any breach of the terms implied by Section 12 of the Sale of Goods Act 1979 or by Section 2 of the Supply of Goods and Services Act 1982; the deliberate or wilful misconduct of that Party, its employees, agents, or sub-contractors; or for any other form of liability which cannot be limited or excluded by law.

12. Data Protection

- 12.1 All personal data that the Parties may use in connection with this Agreement shall be collected, processed, and held in accordance with the provisions of the Data Protection Legislation. Nothing in this Agreement shall relieve either Party of any obligations set out in the Data Protection Legislation or replace any obligations set out in the Data Protection Legislation.
- 12.2 Complete details of each Party's collection, processing, storage, and retention of personal data including, but not limited to, the purposes for which personal data is used, the Parties' legal bases for using such personal data, details of data subjects' rights, and personal data sharing (where applicable) are available in the Parties' respective GDPR policy available on request.

13. Data Processing

- 13.1 The Parties hereby agree that they shall both comply with all applicable data protection requirements set out in the Data Protection Legislation. This Clause 13 shall not relieve either Party of any obligations set out in the Data Protection Legislation and does not remove or replace any of those obligations.
- 13.2 For the purposes of the Data Protection Legislation and for this Clause 13, the Client is the data controller and the Developer is the data processor.
- 13.3 The type(s) of personal data, the categories of data subject, the scope, nature and purpose of the processing, and the duration of the processing are defined within the current GDPR legislation.
- 13.4 The Client shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Developer for the purposes described in this Agreement.
- 13.5 The Developer shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under this Agreement:
 - 13.5.1 process the personal data only on the written instructions of the Client unless the Developer is otherwise required to process such personal data by law. The Developer shall promptly notify the Client of such processing unless prohibited from doing so by law;
 - 13.5.2 ensure that it has in place suitable technical and organisational measures (as approved by the Client) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures;

- 13.5.3 ensure that any and all of its employees with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential;
 - 13.5.4 not transfer any personal data outside of the European Economic Area without the prior written consent of the Client and only if the following conditions are satisfied:
 - a) the Client and/or the Developer has/have provided suitable safeguards for the transfer of personal data;
 - b) affected data subjects have enforceable rights and effective legal remedies;
 - c) the Developer complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
 - d) the Developer complies with all reasonable instructions given in advance by the Client with respect to the processing of the personal data.
 - 13.5.5 assist the Client at the Client's cost, in responding to any and all requests from data subjects and in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner's Office);
 - 13.5.6 notify the Client without undue delay on becoming aware of a personal data breach;
 - 13.5.7 on the Client's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Client on termination of this Agreement unless it is required to retain any of the personal data by law; and
 - 13.5.8 maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 13 and to allow for audits by the Client and/or any party designated by the Client.
- 13.6 The Developer shall not sub-contract any of its obligations with respect to the processing of personal data under this Agreement without the prior written consent of the Client. In the event that the Developer appoints such a sub-processor, the Developer shall:
- 13.6.1 enter into a written agreement with the sub-processor, which shall impose upon the sub-processor the same obligations as are imposed upon the Developer by this Clause 13 and which shall permit both the Developer and the Client to enforce those obligations; and
 - 13.6.2 ensure that the sub-processor complies fully with its obligations under that agreement and the Data Protection Legislation.
- 13.7 In the event that the Developer sub-contracts its obligations with respect to the processing of personal data under sub-Clause 13.6, as between the Client and the Developer, the Developer shall remain fully liable for all acts and omissions of the sub-processor.
- 13.8 Either Party may, at any time, and on at least 3 months notice, alter this Clause 13, replacing it with any applicable data processing clauses or similar terms that form part of an applicable certification scheme. Such terms shall apply and replace this Clause 13 by attachment to this Agreement.

14. Network and Information Systems Security

- 14.1 The Developer has in place the security measures to protect its network and information systems in line with the Cyber Essentials Certificate of which it holds. The Developer hereby warrants that the security measures are accurate and up-to-date and that it shall inform the Client immediately of any changes made thereto.
- 14.2 The Developer shall notify the Client immediately in the event that it becomes aware of any security incident affecting its network and information systems that has the potential to affect the Client. The Developer shall respond without undue delay to any and all queries or requests from the Client with respect to any such incident, irrespective of whether that incident has been discovered by the Client or the Developer, and at all times keeping in mind the extent of any reporting obligations applicable to the Client under the Network and Information Systems Regulations 2018 (the "NIS Regulations") and any other statutory or regulatory time limits with which the Client is required to comply.
- 14.3 The Developer shall use reasonable endeavours to ensure business continuity for the Client at all times.
- 14.4 The Developer shall at all times co-operate fully with the Client with respect to compliance with the NIS Regulations. Such co-operation and compliance shall include, but not be limited to, requests for information in the event of security incidents (suspected or actual) and inspections by regulatory authorities.

15. Confidentiality

- 15.1 Each Party undertakes that, except as provided by sub-Clause 15.2 or as authorised in writing by the other Party, it

shall, at all times during the term of this Agreement and for 3 years after its termination or expiry:

- 15.1.1 keep confidential all Confidential Information;
- 15.1.2 not disclose any Confidential Information to any other party;
- 15.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;
- 15.1.4 not make any copies of, record in any way, or part with possession of any Confidential Information; and
- 15.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 15.1.1 to 15.1.4 above.

15.2 Either Party may:

- 15.2.1 disclose any Confidential Information to:
 - a) any sub-contractor or supplier of that Party;
 - b) any governmental or other authority or regulatory body; or
 - c) any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the design, development, and hosting of the Website), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 15.2.1(b) or any employee or officer of any such body) obtain and submit to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 15, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
- 15.2.2 use any Confidential Information for any other purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

15.3 The provisions of this Clause 15 shall continue in force in accordance with their terms for a period of 3 years after the termination or expiry of this Agreement, notwithstanding the termination of this Agreement for any reason.

16. Term and Termination

16.1 This Agreement shall commence on the Commencement Date and, subject to the provisions of this Clause 16, terminate (following 90 days written notice, not to expire prior to the end of the initial period) at the end of the initial term indicated in the Web Service Agreement. In the event no notice is received by the end of the initial period less 89 days the Agreement will renew for a subsequent term of 12 months.

16.2 Without prejudice to any other rights or remedies which may be available to it, either Party may terminate this Agreement with immediate effect by written notice to the other Party if:

- 16.2.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 30 Business Days of the due date for payment;
- 16.2.2 the other Party commits any other material breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 60 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 16.2.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
- 16.2.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 16.2.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction);
- 16.2.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
- 16.2.7 that other Party ceases to carry on business; or

16.3 Without prejudice to any other rights or remedies which may be available to it, the Developer may terminate this Agreement with immediate effect by written notice to the other Party if: control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 16, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

16.4 The termination or expiry of this Agreement shall be without prejudice to any rights, remedies, obligations, or liabilities which have already accrued to either of the Parties under this Agreement.

16.5 On the termination or expiry of this Agreement:

- 16.5.1 all licences granted to the Developer by the Client under this Agreement shall terminate immediately;
- 16.5.2 the Developer shall return all Client Site Materials and any and all copies of the Project Specification in its possession to the Client without undue delay;
- 16.5.3 the Developer shall provide all such assistance as is reasonably required by the Client in order to transfer the Website to another host, subject to payment by the Client of any and all reasonable costs incurred by the Developer in providing such assistance;
- 16.5.4 any provision of this Agreement that either expressly or impliedly survives the expiry termination of this Agreement shall remain in full force and effect.

17. Force Majeure

17.1 Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party.

17.2 In the event that either Party to this Agreement cannot perform their obligations hereunder as a result of force majeure, the affected Party shall be entitled to a reasonable extension of the time for performing those obligations.

17.3 In the event that either Party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 3 months, the other Party may at its discretion terminate this Agreement by written notice at the end of that period.

18. Audit

18.1 The Client shall have the right to audit the Developer's compliance with this Agreement (including, but not limited to, the Developer's compliance with the data processing provisions of Clause 13) on giving 30 Business Days' written notice to the Developer. Audits under this Clause 18 may, at the Client's option, be limited to documents or it may include an onsite audit of the Developer's premises.

18.2 The Client shall inform the Developer of the identity of any auditors appointed by it under this Clause 18 and, in the event that external third-party auditors are appointed, shall ensure that those auditors are subject to suitable obligations of confidentiality.

19. No Waiver

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

20. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

21. Costs

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

22. Assignment and Sub-Contracting

22.1 The Developer may assign, novate or transfer its rights under this agreement without any prior consent of the Client

22.2 The Client may not assign, novate or transfer its rights under this agreement without prior written consent of the Developer

22.3 Subject to sub-Clause 13.6, the Developer shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Developer.

23. Relationship of the Parties

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

24. Third Party Rights

24.1 Unless expressly stated otherwise, no part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

24.2 Subject to this Clause 24 this Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

25. Notices

25.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

25.2 Notices shall be deemed to have been duly given:

25.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

25.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

25.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

25.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

26. Entire Agreement

26.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

26.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty, assurance or other provision (made innocently or negligently) except as expressly provided in this Agreement.

27. Counterparts

This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

28. Severance

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

29. Law and Jurisdiction

29.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

29.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.