

Last updated on 7th May, 2024.

These Terms and Conditions set out the Agreement between “You/Your”, the customer, and “We/Us/Our”, the supplier (as more defined in the attached “Proposal”) and shall govern the services provided by Us to You.

BACKGROUND

(A) We are in the business of providing the Works (as listed in the Proposal) and as provided in these Terms and Conditions.

(B) You wish to obtain and We wish to provide the Works (as listed in the Proposal), on the terms set out in the Proposal and these Terms and Conditions collectively this “Agreement”.

AGREED TERMS

1. Interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement:

Applicable Laws: all applicable laws, statutes, regulation and codes from time to time in force.

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

Business Hours: the period from 9.00 am to 5.30 pm on any Business Day. We will be available for development and communication during these times, however, in emergency cases out of office support can be provided via the Critical Issue form for Critical Issues only, although We do not offer development resource outside of Our Business Hours so code changes cannot be done outside of Business Hours. We therefore cannot take any liability for website issues outside of Business Hours.

Change Request: has the meaning given in Clause 8.1.

Critical Issues: A Critical Issue must be raised via the Critical Issue form to be treated as such. We reserve the right to downgrade the issue to "Normal" should We decide it does not qualify as a Critical Issue. A Critical Issue is defined as one of the following:

- (i) Restricted payment flow impacting ability to take orders;
- (ii) Database restores (hosted clients only);
- (iii) Server related issues impacting store uptime (hosted clients only); or
- (iv) Compromises and hacks impacting customer data

Your Equipment: any equipment, including tools, systems, cabling or facilities, provided by You, Your agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Proposal.

Your Materials: all documents, information, items and materials in any form, whether owned by You or a third party, which are provided by You to Us in connection with the Works, including the items provided pursuant to Clause 6.1(d).

Data Controller, Data Processor, Data Subject, Personal Data, Personal Data, Breach, Processing and Appropriate Technical Measures: as defined in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation (including the Data Protection Act 2018), any other binding European Union legislation (including The General Data Protection Regulation 2016/679), relating to Personal Data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Delay Notice: a notice given by Us to You that You have not approved or declined a project/Work(s) and therefore the payment terms, costs, Deliverables and Milestones will be amended, solely at Our discretion.

Deliverables: any output of the Works to be provided by Us to You as specified in a Proposal and any other documents, products and materials provided by Us to You in relation to the Works (excluding Our Equipment).

Hourly Rate: Our Hourly Rate in the Proposal or as notified to You in writing as amended from time to time. Current Hourly Rates and service types are available on request and available to view in Our Rates PDF set out in Schedule 3.

Hours: the number of Hours required for a service billed at the applicable Hourly Rate based on volume bought and type of support provided.

Intellectual Property Rights/IPR's: including but limited to; patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, 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, in each case

whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Support Services: support services as defined in Clause 5.6 and Schedule 3.

Security Services: manage website and email security services as defined in Clause 5.7.

Milestone: a date by which a part or all of the Works is to be completed, as set out in a Proposal.

Plugins: Third party plugins as defined in Schedule 4.

Charges: the sums payable for the Works as set out in a Proposal excluding materials.

Proposal: a detailed plan, agreed in accordance with Clause 3, describing the services to be provided by Us, the Milestones for their performance and the related matters listed in the template Proposal set out in Schedule 1.

Our Equipment: any equipment, including tools, systems, cabling, or facilities, provided by Us to You and used directly or indirectly in the supply of the Works, including any such items specified in a Proposal but excluding any such items which are the subject of a separate agreement between the parties under which title passes to You.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

Website Hosting Services: web hosting services as requested by You and agreed by Us in the Proposal and as defined in Clause 5.5 and Schedule 2.

Work(s): the services which are provided by Us under the Proposal, including services which are incidental or ancillary to the Works.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

1.5 A reference to a **company** shall include any company, corporation, or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

1.8 This Agreement shall be binding on, and to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.11 A reference to **writing** or **written** includes email.

1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.13 A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

1.14 References to Clauses and Schedules are to the Clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

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

2. Commencement and Duration

2.1 The "Term" of this Agreement shall commence when the Proposal is signed and dated and shall continue until the Proposal has been completed or the Agreement is terminated in accordance with Clause 15 (Termination).

2.2 If the Term is terminated with notice all existing Proposals shall terminate automatically as per Clause 16.

2.3 The parties shall not enter into any further Proposals after the expiry date or the date on which notice to terminate is served under Clause 15.

2.4 You may procure any of the services by agreeing a Proposal with Us pursuant to Clause 3 (Proposal) during the Term.

2.5 We shall provide the Works from the date specified in the relevant Proposal.

3. Proposal

3.1 Each Proposal shall be agreed in the following manner:

(a) You shall ask Us to provide any or all of the services and provide Us with as much information as We reasonably request in order to prepare a draft Proposal for the services requested;

(b) following receipt of the information requested from You We shall, as soon as reasonably practicable either:

(i) inform You that it declines to provide the requested services; or

(ii) provide You with a draft Proposal. Such estimated Charges, fees and Hourly Rates will be valid for thirty (30) Business Days from the date of the draft Proposal, thereafter We may amend the Charges, fees and Hourly Rates at their sole discretion.

(c) if We provide You with a draft Proposal pursuant to Clause 3.1(b)(ii), We and You shall discuss and agree that draft Proposal; and

(d) You shall sign the draft Proposal when it is agreed.

3.2 Unless otherwise agreed, the Charges shall be calculated in accordance with Schedule 3.

3.3 We may charge for the preparation of Proposal or any delays due a Delay Notice on a time and materials basis in accordance with Our Hourly Rates as set out in Schedule 3.

3.4 Once a Proposal has been agreed in accordance with Clause 3.1(d), no amendment shall be made to it except in accordance with Clause 8 (Change Request) or Clause 19 (Variation).

3.5 Each Proposal shall be part of this Agreement and shall not form a separate contract to it.

4. Tupe on Entry

4.1 Currently TUPE is not relevant to this Agreement.

5. Our Responsibilities

5.1 We shall use reasonable endeavours to provide the Works, and deliver the Deliverables to You, in accordance with a Proposal in all material respects.

5.2 We shall use reasonable endeavours to meet any Milestones specified in a Proposal but any such dates shall be estimates only and time for performance by Us shall not be of the essence of this Agreement.

5.3 We shall appoint a Manager in respect of the Works to be performed under each Proposal, such person as identified in the Proposal. That person shall have authority to contractually bind Us on all matters relating to the relevant Works (including by signing Amended Proposals). We shall use all reasonable endeavours to ensure that the same person acts as Our Manager throughout the term of the relevant Proposal, but may replace that person in its sole discretion, from time to time where reasonably necessary in the interests of Our business.

5.4 We shall use all reasonable endeavours to maintain server uptime and reduce security breaches (where instructed by You in the Proposal) but does not warrant or guarantee the same especially if they are outside Our reasonable control.

5.5 Where agreed in the Proposal, We agree to provide to You Website Hosting Services on the terms described in Schedule 2 of this Agreement. We agree to place the website and/or store created by Us for You in accordance with this Agreement on the computer server owned or operated by Us and allow storage of information received by You or from the general public on such server on a monthly basis subject to agreed limits. Any request for transfer or removal of Your website assets will be charged at Our Hourly Rate.

5.6 Where agreed in the Proposal, We agree to provide to You on a monthly basis Support Services. Such Support Services shall be provided immediately on either a pay as you go payment plan or a bulk buy payment plan as agreed in the Proposal. Support Services shall not include services for problems arising out of (a) tampering, modification, alteration, or addition to the software, which is undertaken by persons other than Our or its authorised representatives; or (b) programs or hardware supplied by You. You shall document and promptly report all errors or malfunctions of the hardware or software to Us. You shall take all reasonable steps necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received in writing (email to suffice) from Us. You shall maintain a current archive copy of all Software and data, and shall properly train its personnel in the use of the software. Support Services, as more defined in Schedule 3.

5.7 Where agreed in the Proposal, We agree to provide You on ad hoc basis Security Services within the Support Services (as more defined in Schedule 3). We shall provide various managed services including, as part of Our portfolio of products, Security Services. We do not guarantee the full security of Our servers and do not guarantee that it will be impossible to 'hack' into any servers. Where Security Services are provided, We agree to provide such services using reasonable skill and care by suitably skilled and experienced personnel. You acknowledge that We will not be liable for any attack on a server if for any reason it is unable to apply a security patch properly due to Your custom configuration, or if You tamper in any way with the security patch that is applied thereby undermining its ability to work correctly.

5.8 Part of the Works may be reliant upon the services from a third-party. This includes, but not limited to; extensions and modules, shipping/courier systems, ERP, POS and warehouse systems, accounts software, and design tools. We will not be responsible or liable for the performance, quality, and costs of these third parties as they are outside of Our control. This includes any delays or additional costs as a result of delays or otherwise, including support costs that may arise from the use of a third-party resource. Should a third-party fail to provide their services to Your expectations or requirements, We will not be liable or responsible for any associated costs or delays, nor will it determine the performance of this Agreement. The performance of this Agreement and any Proposal is not dependent on the performance of any third-party.

6. Your Obligations

6.1 You shall:

(a) co-operate with Us in all matters relating to the Works;

(b) appoint a Manager in respect of the Works to be performed under each Proposal, such person as identified in the Proposal. That person shall have authority to contractually bind Us on all matters relating to the relevant Works (including Change Requests);

(c) provide, for Us, its agents, subcontractors, consultants, and employees, in a timely manner and at no charge, access to You premises, office accommodation, data, digital access codes, domain server access and other facilities as required by Us including any such access as is specified in a Proposal. You shall inform Us immediately in writing (email to suffice) but before any work commences, if You are using any third-party for its website creation, website maintenance, hosting and/or support. You shall be wholly liable for maintenance, hosting and/or support for any domain licences or servers or sites outside of Our control, nor shall We be liable or responsible for any delays caused by such third-party;

(d) provide to Us in a timely manner all documents, accurate and complete information, items and materials in any form (whether owned by You or a third party) required under a Proposal or otherwise reasonably required by We in connection with the Works and ensure that they are accurate and complete in all material respects;

(e) inform Us of all health and safety and security requirements that apply at Your premises;

(f) ensure that all Your Equipment is in good working order and suitable for the purposes for which it is used in relation to the Works and conforms to all relevant United Kingdom standards or requirements and You have comprehensive insurance for Your equipment;

(g) obtain and maintain all necessary licences, rights and consents and comply with all relevant legislation as required to enable Us to provide the Works, including in relation to the installation of Our Equipment, the use of all Your Materials and the use of Your Equipment insofar as such licences, consents and legislation relate to Your business, premises, staff, and equipment, in all cases before the date on which the Works are to start;

(h) where using Our Equipment, keep, maintain, and insure Our Equipment in accordance with Our instructions from time to time and not dispose of or use Our Equipment other than in accordance with Our written instructions or authorisation;

(i) comply with any additional responsibilities by You as set out in the relevant Proposal;

(j) approve or decline all Work(s) submitted by Us in writing (email to suffice) within three (3) Business Days of written request by Us, not to be unreasonably withheld or delayed by You. If You do not reply to the written request for approval (email to suffice) by Us, You may receive a written "Delay Notice" (email to suffice) stating that You having delayed the Works will receive an updated Proposal, and additional costs will become payable by You to Us. The delay in the approval or decline by You will also change the payment terms in the Proposal. For example, only; if payment terms were 50% deposit, 50% on completion a delay in the project/Works then, the payment terms will change to 50% deposit, 40% upon invoice of the date of the Delay Notice, followed by 10% on completion; and

(k) approve or decline Your website before it goes live. Once approved, You agree that the website is working and approved to go live. However, You acknowledge that bugs and issues can occur with software and continued maintenance and support maybe required to keep the website functioning properly post launch. We provide a free post-website launch Support Service for a thirty (30) day period from the launch, as part of the Work. This gives You additional time to raise any issues found after Your website launch. You agree after the free thirty (30) days Support Service period after their website goes live, We will not be liable to You for any post-launch bugs, outages, or viruses. Once this free support period ends, all website issues including but not limited to; bugs, outages, or viruses (regardless of severity) will be Your solely liable. Once the thirty (30) day free period is over, You can choose what support You require from Us and will be charged accordingly.

6.2 If Our performance of Our obligations under this Agreement is prevented or delayed by any act or omission by You, Your agents, subcontractors, consultants, or employees then, without prejudice to any other right or remedy We may have, We shall be allowed an extension of time to perform Our obligations due to the delay caused by You and seek further payment due to such delay to be paid with the next payment invoice from Us. You acknowledge and accept that We do not accept any responsibility or liability where the project/Work(s) is prevented or delayed by any act or omission by You, Your agents, subcontractors, consultants, or employees.

6.3 You acknowledge that We make no guarantees and is not liable for Your website performance, in terms of sales, functionality and also Google and SEO ranking of Your website. We will use Our reasonable endeavours to follow best practice but We cannot guarantee Your website performance.

6.4 We are happy to work with external consultants or advisors You employ to help or assist with Our services or Your business. You understand that they should be engaged prior to an agreement being made to ensure the requirements and specifications are correct. You acknowledge that should You engage a third-party consultant after the Agreement has been signed You are liable to pay for any additional time We need to liaise with the consultant. Furthermore, You understand this may impact on estimated time frames, Milestones, and additional costs may be incurred due to changes to the specification.

7. Non-Solicitation

7.1 Except in respect of any transfer of employees from Us to You pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246). You shall not, without Our prior written consent of the, twelve (12) months after the expiry or termination of this Agreement, solicit or entice away from Us or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant, or subcontractor of Ours in the provision of such Works.

7.2 If any written consent is given by Us in accordance with Clause 7.1, then such consent shall be subject to You paying Us a sum equivalent to 25% of the then current annual remuneration of Our employee, consultant, or subcontractor or, if higher, 30% of the annual remuneration to be paid by You to that employee, consultant, or subcontractor.

8. Change Request

8.1 Either party may propose changes to the scope or execution of the Works but no proposed changes shall come into effect until a relevant **Change Request** has been agreed by You. A Change Request shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Proposal;
- (b) the Charges;
- (c) the Milestone(s) and Deliverables for the Works (if applicable); and
- (d) any of the other terms of the relevant Proposal.

8.2 If We wish to make a change to the Works We shall record the Change Request in a central location made available to You.

8.3 If You wish to make a change to the Works:

- (a) You shall notify Us in writing and provide as much detail as We reasonably require of the proposed changes, including the timing of the proposed change; and
- (b) We shall, as soon as reasonably practicable after receiving the information at Clause 8.3(a), record the Change Request in a central location made available to You.

8.4 If the parties:

- (a) agree to a Change Request, You shall agree to it in writing (email will suffice) and that Change Request shall amend the relevant Proposal; or

(b) are unable to agree a Change Request, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in Clause 29 (Multi-tiered dispute resolution procedure).

8.5 We may charge for the time We spend on preparing and negotiating Change Requests which implement changes proposed by You pursuant to Clause 8.3 on a time and materials basis at Our Hourly Rates specified in Schedule 3.

8.6 For the avoidance of doubt, in addition to Clause 8.2, We shall be able to implement a Change Request where necessary to comply with any applicable law, safety or security requirement, which do not materially affect the nature or quality of the services, and We shall notify You in any such event, although approval is not needed, any such obligations that arise as a result of such event or discovery shall entitle Us to re-cost in its entirety the Proposal.

9. Charges, Payment, and Payment Terms

9.1 In consideration of the provision of the Works by Us, You shall pay Us the Charges. Unless agreed by both parties the payment terms shall be as per the Proposal from the commencement of the Proposal, until the completion of the Proposal or expiry of this Agreement or termination of this Agreement.

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

(a) Our Hourly Rates for each individual person as set out in Schedule 3 are calculated on the basis of a seven and half-hour day, worked during Business Hours; and

(b) We shall be entitled to charge an overtime rate of 2 x the Hourly Rate fee set out in Schedule 3 on a pro-rata basis for any time worked by individuals whom We engage on the Works outside Business Hours.

9.3 Where the Charges are calculated on a fixed price basis, the amount of those Charges shall be as set out in a Proposal.

9.4 The Charges exclude the following, which shall be payable by You following submission of an appropriate invoice:

(a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom We engage in connection with the Works; and

(b) the cost to Us of any materials or services procured by Us from third parties for the provision of the Works as such items and their cost are set out in the Proposal or approved by You in writing (email to suffice) in advance from time to time.

9.5 We may increase any Charges on an annual basis with effect from each anniversary of the date of this Agreement in line with the percentage increase in the Retail Prices Index in the preceding twelve (12) month period and the first such increase shall take effect on the first anniversary of the date of this Agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index. In addition, We may increase any Charges due to other factors out of its control including but not limited to increase of exchange rates and/or increase in software licence fees.

9.6 Any increase shall affect the calculation of the Charges for Proposal entered into after the date the increase takes effect.

9.7 We shall invoice You for the Charges at the intervals specified, or on the achievement of the Milestones indicated, in the Proposal. If no intervals are so specified, We shall invoice You at the end of each month for Works performed during that month.

9.8 You shall pay each invoice submitted to it by Us immediately upon receipt, to the bank account nominated in writing by Us from time to time. Time for payment shall be of the essence in this Agreement.

9.9 Without prejudice to any other right or remedy that it may have, if You fail to pay Us any sum due under this Agreement on the due date:

(a) You shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate, as amended from time to time, but at 8% a year for any period when that base rate is below 0%; and

(b) We may suspend part or all of the Works until payment has been made in full.

9.10 All sums payable to Us under this Agreement:

(a) are exclusive of VAT, and You shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

(b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). However, We reserve the right to set off Your account against any overdue amounts.

10. Intellectual Property Rights

10.1 In relation to the Deliverables:

(a) You and Your licensors shall have a licence of all IPRs in the Deliverables, excluding Our Materials once We have been paid in full;

(b) We grant You or shall procure the direct grant to You (subject to full payment received), of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual licence to use the Deliverables (excluding Our Materials) for the purpose of receiving and using the Works and the Deliverables in its business; and

(c) You may sub-licence the rights granted in Clause 10.1(b) strictly on the conditions:

(i) to Your affiliates and customers only; and

(ii) subject to Us not being held liable for any adaption or modification to the Deliverables, once delivered to You.

10.2 In relation to Your Materials, You:

(a) and Your licensors shall retain ownership of all IPRs in You Materials; and

(b) grants Us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify Your Materials for the term of this Agreement for the purpose of providing the Works to You.

10.3 We:

(a) warrant that the receipt and use of the Works and the Deliverables by You shall not infringe the rights, any rights of third parties to the extent that the infringement results from copying;

(b) shall, subject to Clause 14.3, indemnify You against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) suffered or incurred or paid by You arising out of or in connection with any claim brought against You for actual or alleged infringement of a third parties Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use of the Works and Deliverables; and

(c) shall not be in breach of the warranty at Clause 10.3(a), and You shall have no claim under the indemnity at Clause 10.3(b) to the extent the infringement arises from:

(i) the use of Your Materials in the development of, or the inclusion of Your Materials in, the Works or any Deliverable;

(ii) any modification of the Works or any Deliverable, other than by or on behalf of Us; and

(iii) compliance with Your specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that We shall notify You if it knows or suspects that compliance with such specification or instruction may result in infringement.

10.4 You:

(a) warrant that the receipt and use in the performance of this Agreement by Us, Our agents, subcontractors, or consultants of Your Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party;

(b) shall indemnify Us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a

full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by Us arising out of or in connection with any claim brought against Us, Our agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt or use in the performance of this Agreement of Your Materials; and

(c) acknowledge that, in respect of any third party IPR, Your use of any such IPR is conditional on Us obtaining a written licence from the relevant licensor on such terms as will entitle Us to licence such rights to You.

10.5 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this Clause 10, the Indemnified Party shall:

(a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at Clause 10.3(b) or Clause 10.4(b) (as applicable) ("**IPR's Claim**");

(b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

(c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

(d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

11. Compliance with Laws and Policies

11.1 In performing its obligations under this Agreement, We shall comply with Applicable Laws and policies.

11.2 Changes to the Works required as a result of changes to the Applicable Laws or policies shall be agreed via the Change Request procedure set out in Clause 8 (Change Request).

12. Data Protection

12.1 This Clause 12 sets out the framework for sharing Personal Data between the parties. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Personal Data collected by the Data Discloser for the agreed purposes of this Agreement. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 12 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Legislation.

12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, You are the controller and We are the processor.

12.3 Without prejudice to the generality of Clause 12.1, You will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Us for the duration and purposes of this Agreement.

12.4 Without prejudice to the generality of Clause 12.1, each party shall, in relation to any Personal Data processed in connection with the performance of its obligations under this Agreement:

(a) process that Personal Data only on the documented written instructions unless required by Applicable Laws to otherwise process that Personal Data. Where the party is relying on the laws of a member of the European Union or European Union Law as the basis for processing Personal Data;

(b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

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

(d) not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:

(i) You or We (as applicable), has provided appropriate safeguards in relation to the transfer;

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

(iii) the disclosing party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the disclosing party complies with reasonable instructions notified to it in advance with respect to the processing of the Personal Data.

(e) comply with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

(i) consult with the other party about any notices given by Data Subjects in relation to the Personal Data;

- (ii) promptly inform the other party about the receipt of any Data Subject access request;
- (iii) provide the other party with reasonable assistance in complying with any Data Subject access request;
- (iv) not disclose or release any Personal Data in response to a Data Subject access request without first consulting the other party wherever possible;
- (v) assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (vi) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (vii) at the written direction of the Data Discloser, delete or return Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the Personal Data, for example, financial records for HMRC;
- (viii) use compatible technology for the processing of Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
- (ix) maintain complete and accurate records and information to demonstrate its compliance with this Clause 12.4(e) and allow for audits by the other party or the other party's designated auditor; and
- (x) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties compliance with the Data Protection Legislation.

(f) notify the other without undue delay on becoming aware of a Personal Data breach;

(g) at the written direction of the other party , delete or return Personal Data and copies on termination of the Agreement unless required by Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 12 and immediately inform You if, in Our sole opinion, an instruction infringes the Data Protection Legislation.

12.5 You consent to Us appointing a third party processor of Personal Data under this Agreement. We confirm that We have entered or (as the case may be) will enter with the third party processor into a written Agreement incorporating terms which are substantially similar to those set out in this Clause 12 which We confirm reflect and will continue to reflect the

requirements of the Data Protection Legislation. As between You and Us, We shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this Clause 12.

12.6 Either party may, at any time on not less than thirty (30) days' notice, revise this Clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

12.7 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and reasonable legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees, sub-contractors or agents.

13. Confidentiality

13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients, or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 13.2.

13.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, or advisers to whom it discloses the other party's confidential information comply with this Clause 13;

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

(c) upon commencement of this Agreement, either party may give a press, social media, or PR statement in relation to the Works or this Agreement. If either party does not wish this to happen, the party must inform the other party in writing.

13.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

13.4 This Clause 13 shall survive expiry or termination of this Agreement.

13.5 Emails from representatives of Us may contain information which is legally privileged and/or confidential. You are not the direct intended recipient, You hereby agreed that any unauthorised disclosure, copying, distribution or use of this information is strictly prohibited. Such notification notwithstanding, comments, opinions, information, or conclusions expressed in this message are those of the originator, unless otherwise explicitly and independently indicated by an authorised representative of Us.

14. Limitation of Liability

14.1 Nothing in this Agreement limits any liability by either party which cannot legally be limited, including but not limited to, liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

14.3 Subject to Clause 14.1, and Clause 12.7 Our Total Liability to You in respect of all breaches of duty or contract occurring within this Agreement shall not exceed the Cap of the Total Charges in the Contract Year.

14.4 In Clause 14.3 the following shall mean:

- (a) **Cap.** The cap is the Total Charges of the Works in the Proposal, in the Contract Year in which the breach(es) occurred;
- (b) **Contract year.** A contract year means a twelve (12) month period commencing with the date of this Agreement or any anniversary of it;
- (c) **Total Charges.** The total charges means all sums paid by You and all sums payable under this Agreement in respect of services actually supplied by Us, whether or not invoiced to You excluding ongoing support and optimisation agreements, and minus module costs, Website Hosting Services, and third-party development costs; and
- (d) **Total Liability.** Our Total Liability means including but not limited to; liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement.

14.5 This Clause 14.5 sets out specific heads of excluded loss:

- (a) subject to Clause 14.1, the types of loss listed in Clause 14.5(b) are wholly excluded by the parties.
- (b) The following types of loss are wholly excluded by the parties in this Agreement:
 - (i) Loss of profits;
 - (ii) Loss of sales or business;
 - (iii) Loss of agreements or contracts;

(iv) Loss of anticipated savings;

(v) Loss of use or corruption of software, hardware, data, or information;

(vi) Loss due to late delivery, missed Milestone or Deliverables, including compensation and penalties relating thereof;

(vii) Loss of or damage to goodwill; and

(viii) In addition, any other indirect or consequential loss are wholly excluded by the parties.

14.6 We have given commitments as to compliance of the Work with relevant specifications in Clause 5.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

14.7 We accept no liability for the security, vulnerability or malicious activity on Your website or server at any time including any server outage. All risks are solely at Your own risk. On request We can provide You with an insurance specialist who will provide a quotation for liability insurance against these types of security threat. All insurance quotations and services are provided directly by the insurer to You and are not in any way connected or endorsed by Us. You will be solely responsible and liable for Your selection.

15. Termination

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

(a) the other party commits a material breach of any term of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

(b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company);

(g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

(i) there is a Force Majeure as defined in Clause 17.1;

(j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;

(k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar, to any of the events mentioned in Clause 15.1(c) to Clause 15.1(m) (inclusive);

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

(m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his/her own affairs or becomes a patient under any mental health legislation.

15.2 For the purposes of Clause 15.1(a) **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from, including, but limited to:

(a) a substantial portion of this Agreement; or

(b) any of the obligations set out in the following Clauses; Clause 7 (Non-solicitation), Clause 10 (Intellectual property rights), Clause 12 (Data Protection) and Clause 13 (Confidentiality) over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake, or misunderstanding.

15.3 Without affecting any other right or remedy available to it, We may terminate this Agreement with immediate effect by giving written notice to You:

(a) if You fail to pay any amount due under this Agreement on the due date for payment and it remains in default not less than thirty (30) days after being notified in writing (email to suffice) to make such payment;

(b) if there is a change of control of You and/or Your company; or

(c) upon thirty (30) days' written notice to You

15.4 Without limiting its other rights or remedies, each party shall have the right to terminate this Agreement by giving the other party thirty (30) days' written notice, except for Website Hosting Services and Monthly Hour Plans which is sixty (60) days' written notice as defined in Schedule 2 Notice of Termination.

15.5 In the event that We have reasonable belief that You are no longer utilising Our services, or has appointed an alternate supplier, or has by any other mechanism elected to support the services by other means, or not at all, We may give immediate written notice to terminate this Agreement and shall no longer be liable for any contractual remedy under these terms, either for works completed before, during or after such deemed termination.

16. Consequences of Termination

16.1 On termination of this Agreement:

(a) all existing Proposals shall terminate automatically;

(b) You shall immediately pay to Us all of Our outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, We may submit an invoice, which shall be payable by You immediately upon receipt;

(c) You shall, immediately return all of Our Equipment. If You fail to do so, then We may during Business Hours, enter Your premises and take possession of Our Equipment. Until Our Equipment has been returned or repossessed, You shall be solely liable for its safe keeping;

(d) We shall on request return any of Your Materials not used up in the provision of the Works;

(e) the following Clauses shall continue in force: Clause 1 (Interpretation), Clause 7 (Non-solicitation), Clause 10 (Intellectual property rights), Clause 12 (Data Protection), Clause 13 (Confidentiality), Clause 14 (Limitation of liability), Clause 16 (Consequences of termination), Clause 20 (Waiver), Clause 22 (Severance), Clause 24 (Conflict), Clause 29 (Multi-tiered dispute resolution procedure), Clause 30 (Governing law) and Clause 31 (Jurisdiction);

(f) no documentation shall be provided unless otherwise agreed by both parties beforehand. This includes, but not limited to, website coding documentation, instruction manuals (third-party or otherwise), and how-to guides. Should documentation be required by You, We can provide a cost for the creation and supply of such documentation;

(g) where a pre-discount value was given to You and the Agreement is terminated prior to all services completed, or all payments received, the full monetary value (not discounted) for the full services will become due. The discounts are provided on the basis the Agreement and services are completed in full. This includes, but not limited to, Support Services Hours, integrations, migrations, modules, Plugins, functionality, Website Hosting Services, marketing, and design;

(h) if, during the Term, You have not used all Your bought and paid for Hours under the Support Services, then;

(i) If You are a consumer and You have paid for, but not used, any Hours within 14 days of the commencement of this Agreement, then as per the Consumer Contracts Regulations 2013, You can cancel the Support Services and receive a full refund of the Hours. If You have agreed that the Support Service will start within this timeframe, You will be charged for what Hours You have used during that period and then a refund for the remaining Hours not used; or

(ii) if You are a business We, at Our sole discretion, may cancel the remaining Hours and either; offer no refund to You, or refund You some or all of the remaining Hours bought. For the avoidance of doubt if You are a consumer or business, the Hours used (regardless of amount) will be charged at Our full standard Hourly Rate (not at any previously offered discounted Hourly Rate). This Clause is in addition to Your legal rights; and

(i) if during the Term, You have not used all Your months under the Website Hosting Service then;

(i) If You are a consumer and You have paid for, but not used, any months within 14 days of the commencement of this Agreement, then as per the Consumer Contracts Regulations 2013, You can cancel the Website Hosting Service and receive a full refund of the months. If You have agreed that the Website Hosting Service will start within this timeframe, You will be charged for what months You have used during that period and then a refund for the remaining months not used; or

(ii) if You are a business then all Website Hosting is paid in advance and We are unable to refund any unused months. The months used (regardless of amount) will be charged at Our full standard rate (not at any previously offered discounted rate). This Clause is in addition to Your legal rights.

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

17. Force Majeure

17.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

(a) acts of God, flood, drought, fire, earthquake, or other natural disaster;

(b) epidemic or pandemic, national or local lock-downs;

(c) terrorist attack, cyber-attack, hack, virus, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(d) nuclear, chemical, or biological contamination or sonic boom;

(e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota, or prohibition;

(f) collapse of buildings, fire, explosion, power outage, internet outage, or accident;

(g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);

(h) non-performance by Us or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); or

(i) interruption or failure of service.

17.2 Provided it has complied with Clause 17.4, if a party is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended for the length of the Force Majeure Event accordingly.

17.3 The corresponding obligations of the other party will be suspended, and the party's time for performance of such obligations extended, to the same extent as those of the Affected Party.

17.4 The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than seven (7) days from its start, notify the other party in writing (email to suffice) of the Force Majeure Event, the date on which it started, the likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of the obligations under this Agreement; and

(b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

17.5 If the Force Majeure Event prevents, hinders, or delays the Affected Party's performance of its obligations for a continuous period of more than sixty (60) days, the party not affected by the Force Majeure Event may terminate this Agreement by giving thirty (30) days' written notice to the Affected Party.

18. Assignment and Other Dealings

18.1 You shall not assign, transfer, licence, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of Your rights and obligations under this Agreement.

18.2 We may at any time, assign, licence, sub-licence, sub-contract, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

19. Variation

19.1 Subject to Clause 8 (Change Request), no variation of this Agreement shall be effective unless it is agreed in writing and signed.

20. Waiver

20.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

20.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21. Rights and Remedies

21.1 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

22. Severance

22.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

22.2 If any provision or part-provision of this Agreement is deemed deleted under Clause 22.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

23. Entire Agreement

23.1 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter. Any samples, drawings, descriptive matter, or advertising issued by Us, and any descriptions or illustrations contained in Our materials, website, brochure or catalogue, are issued, or published for the sole purpose of giving an approximate idea of the services available. They shall not form part of this Agreement or any other agreement between Us and You for the supply of services.

23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

23.3 The Agreement applies to the exclusion of any other terms that You seek to impose or incorporate, or which is implied by trade, custom, practice or course of dealing.

24. Conflict

24.1 If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedules, the provisions of this Agreement shall prevail.

25. No Partnership or Agency

25.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture or employment contact between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

25.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

26. Third Party Rights

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

27. Notices

27.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the email address provided by both parties

27.2 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand at the time the notice is left at the proper address or on signature of a delivery receipt;

(b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

(c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

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

28. Counterparts

28.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

28.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG, or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

28.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

29. Multi-Tiered Dispute Resolution Procedure

29.1 If a dispute arises out of or in connection with this Agreement or the performance, validity, or enforceability of it ("**Dispute**") then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, Your Manager (or equivalent position) and Our Manager (or equivalent position) shall attempt in good faith to resolve the Dispute;

(b) if Your Manager (or equivalent position) and Our Manager (or equivalent position) are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to Your Director (or equivalent position) and Our Director (or equivalent position) who shall attempt in good faith to resolve it; and

(c) if Your Director (or equivalent position) and Our Director (or equivalent position) are for any reason unable to resolve the Dispute within sixty (60) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than thirty (30) days after the date of the ADR notice.

29.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under Clause 31 which clause shall apply at all times.

29.3 If the Dispute is not resolved within sixty (60) days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of sixty (60) days, or the mediation terminates before the expiration of the said period of sixty (60) days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with Clause 31

30. Governing Law

30.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

31. Jurisdiction

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

This Agreement has been entered into on the date stated on the signed Proposal.

SCHEDULE 1

Proposal

Provided separately to this Agreement

Proposal Terms

The following terms and conditions relate specifically to the provision of project/Work(s) services. These apply to all projects and are referenced from the Proposal documents. By agreeing to a project/Work(s), You are in agreement of all terms and conditions, including the following:

Timescales

Quoted timescales are guidelines only and depend on the start date and final specification and have been calculated based on the specification, number of design and development amends, third-parties involved, and assumptions made. The project will commence the week following the client “kick-off” meeting or once the deposit payment has been received - whichever comes last. As per Clause 5.2, time for delivery is not of the essence.

To ensure the project/Work(s) runs smoothly and on time You are required to provide Us with content and detailed information as well as the agreed payments and approvals. This may also involve signing up to third-party services and payment gateway providers. Failure to supply the information We need and/or late payments may result in delays and Deliverables which We are not liable or responsible for.

Compatibility

The work will be compatible with the latest version and one prior of the most popular browsers/devices at the time the design is signed off and development is started. Should You require older browser/device compatibility or have any specific requirements such as Internet Explorer or responsive break-points, please ask for these to be included.

Device	Platform	Browser
Desktop/Laptop	Windows/macOS	Edge/Firefox/Safari/Chrome
Mobile/Tablet	iOS	Safari/Chrome
Mobile/Tablet	Android	Chrome

Pricing Notes

All prices exclude VAT, which is charged at the standard UK rate. All quotations are valid for 30 days from the date on the Proposal.

Third-party costs and ongoing running costs are estimates only and subject to change. They are the responsibility of the third-party and We have no control over the costs, tiers, or features of their services.

Invoices will be raised in GBP and all banking fees must be covered by the client. We may be able to facilitate other currencies but will apply a small % to cover fees and conversion discrepancies. We must always receive the correct amount in GBP so additional settlement invoices may be required should the final amount be less. The non-GBP amount will be based on currency exchange rates of Our banking system at the time and will expire after 15 days or if there is a large fluctuation in exchange rates.

Cost outlines do not account for any additional fees that may be incurred from third-party services such as payment gateways or third-party service providers. Any subscriptions or agreements required for the use of third-party services or payment services should be entered into by the client directly, and not managed via Us.

We reserve the right to amend the pricing above to reflect any additional design, development, or Support Services required. Any changes to the designs, specification, or functionality once they have been signed off at the relevant stage may result in delays or additional costs.

The prices above do not include any post-launch maintenance, except when they fall under the included post launch support. Post launch platform upgrades are not covered and are charged separately.

Regarding stage and Milestone payments, should a period of 3 months pass since the previous invoice or payment, We reserve the right to raise an invoice (or request the next stage payment) for the next stage with immediate payment terms, regardless of the stage the project/Work(s) is currently at. This is at Our sole discretion.

Pre-Launch Support/Amends

You have up to 6 months from the start of Your feedback and amends phase before going live, giving You plenty of time to launch. We collate Your amends into batches to make the process as efficient as possible. We allow for 5 x batches of amends before launch. If You do need more time than the included 6 months or additional batches of amends, We can facilitate this for an additional charge which will also impact the timeframe for the project/Work(s).

Post-Launch Support

Once Your included post-launch support period (usually 30 days unless otherwise agreed/stated) has ended all support will be charged, including bugs. The aim of this included support period is to make sure You have time to report bugs once the store is live as it is not possible to capture all bugs before launch.

Training

Training will be carried out remotely or at Our offices but other locations can be arranged. These may incur an additional cost for travel/time expenses. After Your chosen after-care period, all training will fall under Your ongoing support contract.

Design

It is important to understand the way the website front-end theme works (if applicable) and to make sure You are happy, on desktop, tablet, and mobile devices. If You require any changes to customise the design, layout or functionality please let Us know and We can quote for the additional time which may impact Milestones and Deliverables. Likewise, if You need to see how part of the theme looks or any of the standard functionality please let Us know and We will arrange a demo.

This also applies to third-parties such as payment providers as the design and functionality is often restricted. The default design and behaviour of all third-parties, including modules, will be used.

During the project/Work(s), We will provide launch ready graphics (amount confirmed in the Proposal), including homepage banners, image blocks, and category banners.

Subject to payment of the Charges, We will send Your complete designs for Your approval prior to starting the development work. You will have the chance to feedback and make changes in up to 3 x rounds of revisions per page (further amends can be facilitated at an additional cost which will also impact the delivery timeframe). Once approved, We will provide a set of instructions for how the store will be built which You will sign-off along with the design which will be used for the development phase of the project/Work(s).

The admin area of the store will use the standard platform design, layout, and functionality.

Third-Parties

We will work closely with third-party companies throughout the project/Work(s) and may have already spoken with them regarding the project/Work(s). We will do everything We can to assist them and help manage the relationship throughout the project but cannot be held responsible for any delays, quality issues, or additional costs that may arise, which may delay the project/Work(s) overall.

Where possible, external links to third-parties or modules have been provided which have been selected either at Your request or recommended based on Our understanding of Your requirements. It is important that You review these thoroughly and check the features and functionality yourself, asking Us or the provider directly if You have any questions or want to clarify functionality. We may be able to change any selected modules or third-parties at a later date but this may impact costs and timescales. Customisations to any third-party module or service is not included unless otherwise stated in this document.

KPIs & ROI

All figures quoted are guidelines only and based on assumptions, Our experience, and industry standards. We make no guarantees or promises when it comes to performance.

SEO

For any established store or if SEO is important to You (in terms of both preserving Your ranking with a new store or improving Your ranking further) We strongly recommend taking up an SEO migration service. Please ensure You are 100% happy with this as the effects on SEO performance can be detrimental to Your business.

The level of SEO migration service being taken up will be detailed in the Proposal. If there is no mention of SEO migration in the Proposal, We will not be providing any SEO migration service.

The standard platform functionality for SEO will be used, however, additional third-party services and modules can be added at your request. Please let Us know if You would like anything else to be added. If You have any doubt or questions about what is and is not included, please let Us know before agreeing to the Proposal.

Please bear in mind that a ranking drop is expected when launching a new store and We make no promises or guarantees over SEO performance. Over time, typically 4-8 weeks, performance should return to a similar position (or better) but there will be an initial drop as Google indexes the new store for the first time. Whilst We cannot guarantee SEO performance, We do aim to follow latest best practises, guidelines, and utilise Our own experiences and expertise to minimise the risk.

Credit

Unless otherwise agreed in writing, We will add a credit to the site footer to the effect of "Site by Real Agency". This will link to Our website in a new window/tab.

Post Launch Performance Agreements

Should an agreement be entered into to facilitate a post launch payment based on performance, the following standard terms will apply.

- (a) Terms relating to the metrics or specifics of the agreement will be detailed in the Proposal or via a separate signed agreement.
- (b) Payments will be due within 7 days of the agreed metric(s) being hit.
- (c) We do not make any guarantees regarding performance and any metrics or estimations provided are guidelines only and not promises or guarantees.
- (d) The amount discounted from the Project will become immediately due should any of the following events occur:
 - (i) the Project terminated by either Party before completion;
 - (ii) You engage with another partner to support Your website or work on conversion optimisation at any time before the post launch performance agreement comes to an end;
 - (iii) You make changes against our recommendations, without our knowledge, or fail to approve any of our recommendations which we deem to negatively impact the agreed metric(s);
 - (iv) You adjust Your pricing, delivery terms, USPs, payment providers, category structure, or content which we deem to negatively impact the agreed metric(s);
 - (v) issues with server provider, uptime, performance, or speed which we deem to negatively impact the agreed metric(s);
 - (vi) excessive third-party scripts which we deem to negatively impact the agreed metric(s);
 - (vii) issues with tracking, including Our access to reporting tools, resulting in unreliable or missing data;
 - (viii) there is a Force Majeure as defined in Clause 17.1; or
 - (ix) immediately prior to the website going live, either Party may request a review of the agreed metric(s). If both parties cannot agree to new metric(s), the amount discounted from the Project will become immediately due before launch and the post launch performance agreement will be terminated.

SCHEDULE 2

Website Hosting Services

Hosting Terms

The following terms apply to Your websites hosted on Our servers.

Server Choice

Once Your website is live it will be under more strain due to website traffic. You may choose for Us to host Your website. We will monitor the server resources to check Your website is running at its optimum performance. We will have recommended the server based on many factors but until Your website is live it is impossible to know how it will perform. For that reason, We may recommend changing the server to cope with Your website demands.

Should You require an increase in server resources to the next package available We will bill You pro rata for these costs for the year in advance. Once Your package is increased We are unable to reduce this Website Hosting Service package in the future, however, the server can be increased at any time.

Server Support

If We host Your website and there is a critical problem with the server, You can raise an issue using Our Critical Issue form and We will investigate. Non-critical issues should be raised via your account management team or using our support email address. Server issues on sites hosted by Us are usually provided free of charge as part of the Website Hosting Service package.

Server Only Packages (No Support)

Should You be on a server only package any support relating to the server will be charged at the normal Hourly Rate. This includes resolving any downtime, upgrades, questions, performance, investigations, access, or general support. These packages are offered as server only and do not include any support. This clause supersedes all other clauses relating to hosting and Website Hosting Services.

Commencement

Website Hosting Services are handled in full calendar months with no part-monthly payments. Your annual Website Hosting Services commencement date will be defined as the first day of the month that Your website is moved to Our server whether live or in development. For the avoidance of doubt, if Your website is set up on the 12th day of the month, Your Website Hosting Services will commence from the 1st of that same month and You will be charged for the full month.

Bandwidth

Unless otherwise stated, all Website Hosting Services packages include 50GB bandwidth per month threshold. Additional bandwidth is charged at £1 per GB per month above the included threshold.

Should Your website traffic spike, or as a result of Your server being compromised Your bandwidth usage increases resulting in Your account exceeding Your bandwidth allowance, We reserve the right to charge You for any additional bandwidth.

Storage

Additional storage is charged in 50GB blocks at £50 per month per block, paid annually in advance.

Domains & DNS

Domains (.com and .co.uk domains only) can be hosted and renewed by Us for You at a cost of £30 per year invoiced in advance to You.

To ensure a complete issue free service We require access to Your DNS to fully understand the services You have enabled and for Us to quickly make any changes required. This is required for creating SSL certificates, validating domains, emails, firewalls, and monitoring, for example.

Additional Services

You can purchase additional server tools and services which are not part of Our standard Website Hosting Services. Compatibility may vary depending on Your package so please check with Us. These services include:

- Varnish or Redis cache (included in some packages)
- New Relic server and website performance monitoring (alternatives are also available)
- SendGrid SMTP email sending and reporting (alternatives are also available)
- CloudFlare Bot monitoring
- Sucuri Firewall
- Foregenix Malware Scanner
- CDN
- Load Balancers
- Scaling Up

Server Access (On Our Website Hosting Services)

As common practice We do not provide SSH (or SFTP), database or control panel access to Our servers to any website owners or any third parties. Only Our staff will have access to Your website files and database. This is done to prevent changes being made to server files which may prevent the deliverability of Your website.

At Our sole discretion We may grant server access to You, or any of Your own third-party development partners. In these cases, and when the access is not Read-Only, We charge for the following services at Our standard Hourly Rate:

- Security support/advice.
- Supporting third-party (access, permissions, questions etc.).
- Resolving any issues (including downtime) as a result of third-party work.
- Deploying changes made by You or Your third-party development partner.

- Investigations into code or server issues, even following or as a result of, Our deployments or changes..
- Development to keep the code and environments up to date and in sync.

Moving Hosting Services (Away from Us)

Should You wish to move to another server provider from Our Website Hosting Services, We will provide read-only SSH access for Your new partner to take a copy of the files and database. The cost for this service to You is 1 hour paid in advance. We will continue to host the website until the expiry date, after which Your account will be terminated and all website files and databases will be deleted.

We can provide a Zip file of site files and database if You require at a cost of 3 Hours. Should We be required to provide additional files/backups these would be charged at 1 Hour per supply of Your website files and database.

We will only provide access to the server once all accounts are settled in full and in good standing, the Website Hosting Services are paid up to the end of Your notice period, and the transfer fee is paid in advance.

We will not provide support to other third-parties on Your website installation to another server outside of Our server. We do not provide documentation however We may be able to on request for an additional charge.

We will no longer be responsible for Your website once the transfer is completed. For Us to make changes to Your website once You have moved servers We will need to sync Our local version before any amends can be completed. Our cost for this service is detailed in the section entitled "Website Files Update" within Schedule 2

Moving Hosting Services (Into Us)

By signing up to Our Website Hosting Services, We will transfer Your site from Your existing hosting provider to Our servers, inclusive of Our hosting cost. Should We encounter issues We will do what We can to resolve but We reserve the right to charge for any additional and out of the ordinary setup work if required.

Website Hosting Services Payments

All payment for Website Hosting Services should be received immediately from the date of invoice. Failure to pay this invoice on time will result in one email reminder and a further seven (7) days to pay. Should Your account not be paid within this timescale then Your website services, which include Website Hosting Services and email will be suspended. During this suspension no visitors will be able to access Your website and all emails will bounce back to sender. Websites which have been suspended will be subject to a £450 re-activation fee plus the full outstanding payment for Website Hosting Services and any other overdue invoices, plus interest due on the outstanding payments. We cannot guarantee that data (including website files, database) will be saved during the suspension of a server as in some cases, the server will be automatically deleted and all data will be lost.

We reserve the right to allocate any payments to other overdue invoices first before payment is applied to Website Hosting Services invoices, so please ensure You keep Your account in good order to prevent suspension of website and email services.

For servers, We are happy to offer quarterly Direct Debit with a 20% surcharge added to each quarterly payment. Quarterly payments must be made by Direct Debit. In exceptional circumstances and at Our sole discretion, We may accept BACS payment for quarterly hosting intervals providing payment is received no later than the 1st working day of the month. An additional surcharge of 30% of the annual cost is added to each quarterly payment made via BACS.

Monthly rolling payments can be offered at Our discretion. There is a 40% surcharge of the annual hosting cost divided by 12 months. For more than one month, all payments must be made via Direct Debit. All payments must be made before the start of the month.

Important - Notice for Termination

For Website Hosting Services, We require two (2) full calendar months written notice of cancellation from You. This is because there is a notice period on the server. For the avoidance of doubt, if You provide notice for terminating hosting on the 20th of Jan, You will need to pay for Feb and Mar.

We are unable to offer any refunds for cancelled Website Hosting Services or unused Website Hosting Services months. This includes when paying annually or quarterly in advance.

Hosting Externally

Should You wish to host Your website externally We ask that We are given full access to Your server and control panel so that We are able to perform Our normal duties. Should work be completed by any third party outside of Us, then We would need to make a copy of Your website back to Our local system before any work can be completed. Our cost for this service is detailed in the section entitled "Website Files Update" within Schedule 2. Please note that should We not be informed of any changes made by third parties this work may be overwritten by Us, if We perform future updates. We will not be responsible for any costs incurred or time involved in fixing overwritten work where We were not given written notice (email to suffice).

We do not provide any support for externally hosted servers and if We do not have full server access this may result in additional time and subsequent costs to resolve or workaround the access issues. You will be responsible for making sure Your server is configured correctly, securely, and maintained.

SendGrid & AWS SES

Due to the restrictions of some common mailboxes like Gmail, emails from Your website can often be prevented from being delivered as Your website is not the email account it claims to be. This is further exaggerated if the emails are hosted on a separate server away from the main website. To provide Your website email communication We can bolt on a third party mail client called SendGrid to deliver these emails. All emails will still come directly from Your website, but via their SMTP server.

SendGrid is included as part of Our Website Hosting Services packages (it is not included with WordPress hosting and a fair usage policy applies, see below). This will use Our shared SendGrid account but for improved deliverability and visibility You should have Your own account. If You do this, You will need to configure Your own SendGrid account and send Us Your

account credentials for Us to setup on Your server. As the account will be in Your name, You will be responsible for all costs of using SendGrid.

Additionally, We offer AWS SES as an alternative to SendGrid which can be effective if there are deliverability issues with SendGrid. If You require AWS SES this can be installed and setup at 2 Hours as a one-off cost. The ongoing cost of using AWS SES will be included in Our hosting costs (a fair usage policy applies, see below), providing the AWS account used is Ours. If You use Your own AWS account, You will be responsible for all costs of using AWS SES.

A fair usage policy applies so when sent emails exceed 5,000 in a calendar month, additional charges of £0.01 per email sent will be incurred and You may be required to have Your own account.

Elastic Search

We can provide an external AWS server to host and power the Elastic Search. This can take any strain off the main server to perform search queries. Our standard Elastic Search server starts at 4 Hours per year. The cost to implement into Your store is 4 hours as a one-off setup fee.

Server Packages

Magento 2

See Our Rates (<http://www.realagency.co.uk/rates>) for details on the servers currently available.

Magento 1 (Legacy)

The following servers are offered to Magento 1 clients. These servers are no longer offered for new accounts but We will continue to host existing clients on the following servers:

	M1 Entry	M1 Low	M1 Medium	M1 High
Type	Digital Ocean	Amazon AWS	Amazon AWS	Amazon AWS
CPU	1	2	2	2
RAM	2GB	8GB	8GB	8GB
Storage	40GB	150GB	150GB	150GB
Magento Optimised	No	Yes	Yes	Yes
Multi-Store	No	No	2 Stores	3 Stores
Firewall	No	Yes	Yes	Yes
Cost	£2,000	£3,500	£4,500	£6,000
Quarterly Cost	£600	£1,050	£1,350	£1,800

WordPress Server Pricing

Our hosting services are charged annually in advance. All prices are based on storage and bandwidth usage using the tables below:

Low Bandwidth (up to 20GB per month)	£400 per annum
Medium Bandwidth (up to 40GB per month)	£1,000 per annum
High Bandwidth (up to 60GB per month)	£1,750 per annum

All WordPress servers come with 5GB of storage.

SaaS Apps Hosting

In some cases, and to extend the core platform framework We are required to build custom apps. These apps require hosting for them to work on Our recommended hosting platform. You will need to provide hosting for these apps and We will assist with the setup of these for You. You will need to host these apps on a domain (or sub domain) of Your choice. The cost for both will be minimal but it gives You the control and ownership of these apps. If You decide to host these apps on a platform which We do not recommend, Our support and assistance may be limited and We may charge for any additional time We are required to spend in assisting you with this.

Development Server Terms

Development Environment Hosting

A development environment is required for Us to maintain and support Your website. By default, all Our development servers will meet Our performance requirements to facilitate Our development tasks. Full access to these servers will be limited to Us only as they will be integrated with Our deployment tools and code repositories.

For clients paying the management fee:

Development environments are covered as part of Your ongoing management fee.

For clients not paying the management fee:

Development environment hosting is charged at £350 per year paid in advance. Following the launch of a project/Work(s), this charge commences the following month after launch. We are unable to work with any third-party or external development environments outside of Our control.

If any extra resources are required by You to increase the performance of Our development server, We can provide a quote for this upgrade. If any additional development servers are required, they will be charged at £350 per year paid in advance. Additional servers and upgrades are not offered for free under the criteria stated above.

Security Terms

Admin Security

We request that You regularly update Your admin passwords, as a minimum this should be every three (3) months. Passwords should be a minimum of 8 characters and have at least 1 capital letter, 1 lowercase letter, 1 number and 1 special character. If You fail to make these changes on a regular basis it not only compromises the security of Your website but also Your server. We reserve the right to suspend services of sites who do not follow this instruction.

Third-Party Access Via Admin

You are in control of all access to Your admin panel and can grant access to anyone by setting up a new user and defining roles. Please note We would insist You follow the Admin Security instructions as listed in Schedule 2 to ensure passwords are set securely.

Security Compromises

Should any website on Our server or externally hosted be hacked or have its security compromised, We will assist in removing the malware and repair all faults at Our Hourly Rate or via Your Support Services plan. Please note, for a serious security breach, server cleanse and website restores could take up to 30 hours. Should any website be hacked, We would suggest You purchase services from Our security partners to identify the breach of code and help Us investigate and secure Your website. This will be at Your cost and all time will be charged at Our Hourly Rate. Additional charges may be required by third-party security services. We will endeavour to advise You of security implementations to help keep Your website from being hacked. However, We can only advise, and it is Your sole responsibility to read all of Our documentation and agree to Our suggested implementations. We accept no liability or responsibility for investigations required by Your payment gateway supplier or fines which may arise as a result of their investigations. In addition, You acknowledge that the internet is not 100% safe and We do not warrant or guarantee that Our servers will not be hacked or that Your website will not be hacked or compromised.

Regular Updates

All sites on Our servers are in a dedicated environment (with the exception of some WordPress sites) so it is important We regularly update the security of Your platform installation with any new updates to the platform or the Plugins You operate to ensure the continued safety and security of Your server. As either recommended by Us or requested by You, We can do the following:

- Platform version update (if applicable);
- Plugin updates; and
- Additional security recommendations and tasks.

All of these listed above, fall under Support Services and will be quoted separately based on the work involved.

Payments “Off Page”

For added security, We strongly recommend that You use an “Off Page” payment method meaning the customers enter their card details on the payment providers website instead of Your store. If You decide to use “On Page” payments, You will need to ensure You are PCI Compliant and use the third-party malware scanning by Foregenix (see below).

PCI Compliance

The Payment Card Industry Data Security Standard ("PCI") is a proprietary information security standard for organisations that handle branded credit cards from the major card schemes including Visa, MasterCard, American Express, Discover, and JCB. It may be a requirement of Your payment provider to ensure Your website and server are PCI compliant, however, it remains Your responsibility to inform Us in writing (email to suffice) if this is required, as well as informing Us of any scan failures. You may also opt to be PCI compliant on a voluntary basis for additional security and protection. You may be liable if any card details are maliciously obtained through Your website or server unless You are PCI compliant. There are various companies who offer quarterly testing to provide a certificate of compliance, these will normally be nominated to You by Your payment gateway provider. Our costs for initial compliance as well as ongoing compliance is charged hourly at Our Hourly Rate.

Foregenix (Malware Scanning)

Foregenix (www.foregenix.com) is a website antivirus system We may install on Your website and server to provide additional protection including malware detection, security monitoring, and helps detect hackers. We strongly recommend this for all customers to protect and monitor Your website at all times, and allows You to quickly and efficiently deal with any issues detected.

The cost to You is 4 Hours one-off initial setup paid to Us and an annual subscription paid directly to Foregenix. See Foregenix website for latest pricing. If We are required to action or check anything under this additional security, this is charged at Our Hourly Rate.

Sucuri (Web Scanner)

Sucuri offers a web scanner inclusive of support from their security specialists. This service compliments the Foregenix service above because their technical support team work along-side Our developers during critical times of code compromise.

The cost to You is 2 Hours one-off initial setup paid to Us and annual subscription paid directly to Sucuri. See Sucuri website for latest pricing. If We are required to action anything under this additional security, this is charged at Our Hourly Rate.

CloudFlare (Performance/Security)

CloudFlare offers geo-location, bot protection with a firewall, and performance/security enhancements.

There is a one-off setup cost of 4 Hours and a monthly subscription to CloudFlare for the Pro account. If You require the Business account for either the extra features or an Extended Validation SSL, the one-off setup cost is 6 Hours.

For CloudFlare prices please refer to <https://www.cloudflare.com/plans/>. If We are required to action anything under this CloudFlare service, this is charged at Our Hourly Rate.

SSL Certificate Pricing

SSL certificates are charged annually and can include the Extended Validation (EV) certificates which add the green bar to the browser address bar for added security. To provide the EV certificate You will need to provide extra security checks

including valid business ID (company or VAT reg. certificate) which matches the domain WHOIS record or if registered in a personal name, a valid photo ID (passport or driving licence). If valid ID is not provided, You will be assigned the standard SSL certification without the Extended Validation.

SSL Type	Install & First Year	Annual Renewal
Standard	£300	£200
Multi Domain (Max 5)	£400	£300
Extended Validation (EV)	£700	£450
EV Multi Domain (Max 5)	£800	£650

A budget SSL certificate, Let'sEncrypt, is available at £100 per year but only compatible with budget servers only and offered at Our discretion.

Liability

Further to Clause 14, We accept no liability for the security, vulnerability or malicious activity on Your website or server at any time. The security options have been presented to You and remain optional solely at Your own risk. On request We can provide You with an insurance specialist who will provide a quotation for liability insurance against this type of security threat. All insurance quotations and services are provided directly by the insurer to You and are not in any way connected or endorsed by Us.

Email Terms

Existing Customers Only

Some existing customers will be setup as standard with a maximum of three (3) email accounts per website hosting account. These emails will be delivered via Our Amazon email server and will be restricted to a storage space of 500MB per account. Should You exceed this storage allowance Your account will be frozen, We strongly advise You to download and store all emails locally. Please note Our email server is protected to restrict mass email send outs, so should You try to send to more than fifteen (15) recipients in one email Your account will be frozen. If You repeatedly have Your email accounts frozen You will be removed from Our email server and asked to seek an alternative email provider.

3 x Email Accounts:	£Included
Additional Amazon Email Account:	£75 per year
Additional Rackspace Email Account:	£100 per year

- All accounts will be restricted to 500MB storage space.
- All email accounts are billed annually in advance.
- Refunds are not provided for early cancellations/termination of Your email services.

New Customers

For all new customers We offer email services through Our email partner Rackspace. Rackspace offer a dedicated cloud hosted email system which provides access via POP, IMAP and Webmail. Our prices for this system are as follows:

Initial Setup:	£125 (per address)
Annual Subscription:	£100 (per address)

We can offer limited support with these email accounts; however all support is available in Your webmail control panel which will be provided to You once setup is completed. We are unable to offer support on setting up these emails on Your multiple devices, however, instruction documents for the most common operating systems, mail clients and devices will be provided to You free of charge, during the Term. We are unable to offer any other email services and You are free to select a third party alternative should You wish to manage Your email elsewhere.

SCHEDULE 3

Support Services

Support Terms

What is Support?

Support Services include, but not limited to, the following:

- Training and questions
- Design, UX and CRO
- Bug fixes, errors, and downtime
- Platform updates
- Security
- Performance optimisation
- Front-end enhancements
- Module and custom functionality

Websites are living and breathing things and as such bugs and issues do arise. All bugs and issues fall under ongoing Support Services and are chargeable at Our Hourly Rate regardless of how the issue came to be. This includes, but not limited to, future bugs as a result of previous work carried out by Us which falls outside of Your free support period, see above.

Larger projects fall outside of ongoing Support Services and are quoted and paid for separately.

Support Options

See Our Rates (<http://www.realagency.co.uk/rates>) for details on the support plans currently available.

Warranty

With all support work carried out by Us, We offer a ten (10) day support period for related bug fixes, unless otherwise stated in writing (email to suffice) to You. This excludes platform upgrades, unforeseen issues and/or issues We deem as out of scope. After this period, Our Hourly Rate applies.

Critical Issues

All Critical Issues must be raised via Our Critical Issue form. This is to ensure that the wider team receives notification and the Critical Issue is dealt with as quickly as possible as a priority. Failure to do this, may result in delays.

If You submit a Critical Issue which We deem not to qualify as a Critical Issue, We will adjust the priority accordingly or offer to do the work at double Our Hourly Rate at Our discretion should You wish Us to work on it as a priority.

Qualified Critical Issues will have Our immediate attention during Our Business Hours with a response within 1 hour. Outside of Our Business Hours, Critical Issues will be responded to within 2 hours between 9am and 9pm.

Payment/Billing

Unless otherwise agreed, payment of hours is required in advance and in full before work can be scheduled or started. If You do not have enough hours to cover the work, You will be required to top-up Your balance before We can commence work with the exception of monthly Direct Debit plans, where the additional hours will be taken automatically via Direct Debit at the end of the month.

Plugins and third-party costs, such as user testing costs or third-party developers are invoiced and paid for separately.

Any time spent out of Our Business Hours will be charged at double the Hourly Rate with a minimum charge of 2 hours. Out of Our Business Hours support is not available to Pay As You Go customers.

Validity of Hours

All purchased hours need to be used within a 12 month period from the date of purchase. Hours will only be credited into Your account once payment has been received.

Refunds of Hours

No refunds are provided for any unused hours, under any circumstances. In addition, once Your support or hosting contract has been terminated any remaining hours balance will be cleared down and You will be unable to use them up for any additional services. For avoidance of doubt, should You have hours remaining in Your account after leaving Our Website Hosting Services or Support services, You will no longer be able to use these hours for additional services such as, but not limited to, design, development, support, or optimisation.

Response Time

For all plans excluding PAYG, We offer a maximum 1 working day initial response time on all support requests, excluding Critical Issues. For PAYG plans, We offer a maximum of 3 working days for an initial response.

Billing Increments

For all plans excluding PAYG, We bill time in 15 minute increments. For PAYG plans, We bill time in 1 hour increments. This also means there is a minimum charge of 15 minutes and 1 hour respectively.

Post Project Support

For stores built by Us, We can provide a period of included post-live support that will commence on the day of launch of Your website from Us. The duration of this will vary so please refer to Your Proposal for details. Additional longer plans are available for You to select if You choose. This gives You time to raise any issues You find after the launch of Your website which will be fixed by Us free of charge. This covers bugs, fixes, "how to's" and advice but excludes out of scope changes not included in the Proposal. Anything raised after Your inclusive period will fall under Support Services and chargeable by Us. Valid bugs raised within Your inclusive period will continue to be worked on after the period ends, free of charge. Not all projects include this support period post-live so please check Your Proposal for details of post-launch support.

Monthly Direct Debit Plans

If You go over Your monthly hours, You'll be automatically billed for the extra via Direct Debit once Your existing balance has been exhausted. Hours will be added to Your account at the start of each month once the payment has been made. If You run out before the next top up, You will be automatically billed via Direct Debit (at the same rate as the plan You were on that month).

There is a minimum commitment after which it goes onto a monthly rolling commitment. To cancel a plan, You must provide 1 full working month notice.

Payment will be made at the start of the month for the given month. If a payment fails, work will stop (regardless of how many hours have already accumulated) until the payment has been successfully made.

Changing a plan (either increase or decrease the hours), will commence from the next month providing We have 14 days notice to adjust the Direct Debit payment.

Website Files Update

Should We need to refresh Our local servers and code repository as a result of external factors, including, but not limited to, You or other developers making changes, We will charge 4 Hours payable in advance to copy all the files back to keep Us in sync.

Billing Options

Progressive

We bill for the time We spend each month across all departments. Estimates can be provided to help prioritise but the idea is that We work closer with You so You can benefit from less admin and more time doing. We work based on priorities and deduct hours either weekly or monthly so You can keep track of time spent and manage the cost. Refer to Your chosen support plan terms for handling overage of hours.

We use a time tracking system to keep track of time.

Either party can cancel the Progressive option with 1 months notice with the agreement reverting to the Fixed Quote option. There will be transition time for work already started.

Fixed Quote

For all quoted work, We will quote and in some instances provide a Statement of Work (SoW) requiring sign-off from You before We start.

All requests sent to Us for work under and including 2 hours will be automatically deducted from Your hours in 15 minute increments (or 1 hour increments for PAYG clients).

Hours will be deducted from Your account once You have approved the work and before We start.

Our quote will be based on the brief in the SoW. This may be a definite number or a range, depending on the task.

The quote will cover the details in the SoW document but does not include unforeseen work or anything which we deem as out of scope. These will be quoted for separately if and when they happen and additional hours will be required.

Unforeseen work is something We have not expected and therefore not quoted for, so please ensure the SoW is as detailed and accurate as possible. For avoidance of doubt and to make this as clear as possible, the following scenarios would be deemed as unforeseen (this is not a limited list):

- Checkout module breaks an integration.
- Loyalty points module breaks product page layout.
- Module or third-party does not work as expected.

The following would be deemed as out of scope:

- Module requires customised development;
- Changes to the design after sign-off;
- Additional development work; and
- New feature requests.

Own Dedicated Team

Own dedicated team agreements vary based on the requirements and therefore have a separate agreement to cater for a dedicated team.

Management Fee

All clients are required to pay a monthly management fee to ensure We're able to provide Our services. This fee is paid monthly via Direct Debit at the start of each month. This fee covers Our costs to support You as a client and the time required to service Your account, and is required for Us to work with You on Your store.

This is a monthly rolling fee for the duration of Our working relationship. You must provide 30 days notice to cancel after which We will no longer be able to provide You with any services, including but not limited to hosting, support, experience, development, or design.

This fee does not apply throughout the first 12 months of a new project build (unless We are also working with You on an existing store) but following launch, this fee will commence from the 1st of the following month after Your store goes live. Once 12 months have passed during the project build and the store is not live, this fee will apply unless otherwise agreed.

This fee is completely separate from Your hours agreement/s.

This fee may be reviewed at Our discretion annually (based on the anniversary of the first payment) and subsequently altered if We deem this to be necessary.

This fee is based on the size and complexity of Your store, Your business, platform type, and estimated usage. We will confirm this cost with You.

Joint Development

The following processes must be adhered to in order to facilitate working alongside another development partner:

- Deployments to all environments must follow the process.
- Deployments must be made Mon-Wed only and before 2pm (GMT).
- Before deploying, we must be given 24 hours notice.
- Our demo environment must be used for work before being deployed to the live server.
- Our processes for deploying to the various environments must be followed.
- You must make us aware of any database changes You make.
- Our processes for working with the code repository must be followed.

We will confirm Our processes beforehand to ensure You are happy and have the necessary skills to perform them. Should You require training, We may be able to facilitate at an additional cost.

Please make sure You understand the risks associated with making Your own changes. If You make a change that brings the site down, We may not be able to help in a timely manner. We will do Our best to assist and work with You but We cannot guarantee that We will have the staff and resources available at the time.

Credit

For clients joining Us for ongoing support services, unless otherwise agreed in writing, We will add a credit to the site footer to the effect of "Support by Real Agency". This will link to Our website in a new window/tab.

SCHEDULE 4

Third-Party Plugins

Plugin Terms

All software Plugins are subjected to the following terms and conditions. Please read carefully before agreeing to the installation of Plugins for Your chosen platform. Plugins are also referred to as extensions, apps, and modules.

Choosing a Plugin

We will work with You to assist in selecting suitable Plugins to further enhance Your website. We can help You to select a Plugin and will do Our best to check whether the Plugin fulfils Your requirements but You need to verify the Plugin works for You based on Your requirements. We recommend that You contact the Plugin developers directly and ask any relevant questions You have before We go ahead.

Plugins are used to extend the standard platform functionality without custom building the functionality ourselves from scratch. For this reason, We cannot be responsible or liable for any issues that arise out of the use of a third-party Plugin. This includes bugs, additional costs, or delays as a result of a third-party Plugin. You acknowledge that We can only recommend a Plugin and that third parties are not endorsed by Us. You will be solely responsible and liable for the chosen Plugin.

Purchasing Plugins

In most cases, We recommend You buy the Plugins, since You have control and ownership over any licences. This applies to free or paid for Plugins. We will require access to Your Plugin providers' account so We can download the Plugin (if necessary), obtain support from the Plugin developers, and retrieve any licence keys required for different development environments.

If You would prefer for Us to purchase (either free or paid) Plugins for You, We can do it from within Our account and invoice You for the amount. However, We may not be able to transfer the Plugin licences to You at a later date should You need. This will result in You having to re-purchase the Plugin again.

Should We purchase the Plugins on Your behalf, all Plugin costs not in GBP will be converted to GBP at the current rate provided by Our bank and the bank charges will be an expense chargeable to You.

You will be billed in hours to carry out the Plugin work which can be deducted from Your balance or invoiced separately for the required hours.

Cost of Plugin Installation

Unless otherwise stated, Plugin installation costs do not include the following:

- Basic setup of the Plugin in the admin.
- Additional development work should the Plugin not work as expected.

- Front-end design and development to integrate the Plugin on the website.

All additional work required to install or setup the Plugin is charged at Our Hourly Rate.

Plugin Support

We do not provide support on how to use Plugin functionality so You will need to contact the Plugin developers for help on how to use it should We be unable to offer support.

Plugin Refunds

In the event a Plugin does not work, We will seek a refund from the Plugin developers on Your behalf (if relevant). If successful, this refund will be passed back to You. However, Our installation and subsequent design and development costs cannot be refunded. If the Plugin developer is unable to offer a refund for any reason then We will charge the full Plugin price as originally agreed with You.

Plugin Updates

All Plugin updates to existing installed Plugins will be quoted but may cost as much as the original install cost.

External Installation

If You install Plugins Yourself or ask external developers (including the Plugin developers) to install the Plugin on Your behalf, any subsequent work We need to do on Your website will result in a charge to get the latest copy of Your website from the server and update Our code repositories. This charge will be made when the website files or database structure are changed by any external developers. Our cost for this is detailed in the section entitled "Website Files Update" within Schedule 2. We may also be unable to provide ongoing support as We will no longer be in full control of Your website.

Licences

If You would like a copy of all available Plugins and licences We will charge for Our time to provide this to You on a best effort basis. This cost will vary depending on the complexity and number of Plugins.

Note that not all Plugins will have licences/serial keys and that not all come with support from the Plugin provider. Some Plugins may be contained within Our account which We do not transfer. We are unable to move support from Our account to Your own account (or an account of another partner), should You have one. In some cases, You may need to re-purchase the Plugin yourself if You require support from the Plugin developer and proof of purchase.

If You are concerned about this, You can purchase the Plugins Yourself directly and provide Us with access to Your account so We can perform Our support duties.

SCHEDULE 5

Data Sharing Consent

In order for Us to work together effectively, We may need to grant access to Your live site with carefully selected extension developers, sub contractors, or third-party developers. This means that a third-party may have limited or full access to Your live site which stores Your customer's Personal Data.

We have already ensured that third-party developers have agreed to the EU Model Clauses. This means that they are contractually bound to uphold the high privacy and data protection standards outlined under the General Data Protection Regulation (GDPR).

By agreeing to Our terms, You are providing Your permission for Us to share access to Your store for the purposes below.

Permission To Share Your Data With Other Service Providers:

All work with Us is treated confidentially, however, from time to time We need to share this information with third-parties in order to complete Your work.

If You give consent by agreeing to Our terms, You are agreeing that We can;

- Share the information included within Your work request), with carefully selected service providers so that they have the necessary information to assist where required. Please note that We will not share any non-relevant Personal Data.
- Share any screenshots, videos, etc included within the work, with the agreement that this will be deleted once the request has been solved.
- Grant limited or full access to Your live store until the issue has been resolved.

Please note that all third-party suppliers instructed by Us are contractually bound and fully compliant with the requirements set out within the GDPR.

What is personal and sensitive data?

Personally identifiable information (PII), or sensitive personal information (SPI), as used in information security and privacy laws, is information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context. (i.e., personal or customer addresses, contact e-mails, contact telephone numbers, etc.).

Can I withhold my consent?

We will not share Your information with anyone else without Your consent, unless required to do so by law. Please note that this may affect Our ability to resolve Your request and work together.