



## Terms of Business

V1.6 Revision. 2023

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These Terms and Conditions (as from time to time amended as referred to in clause 4.1 below) (Terms) set out the terms under which we, Siruss Ltd, (registered in England and Wales with company number 8772516, with our registered office at Emstrey House North, Shrewsbury Business Park, Shrewsbury, Shropshire, SY2 6LG), provide web development, internet hosting, digital marketing and related services to our clients.

Our trading name is 'Siruss'. All web development, internet hosting, digital marketing and related services provided by us shall, unless otherwise agreed by us in writing, be subject to these Terms. By requesting us to provide any services to you, you hereby agree to be bound by these Terms. Schedule 1 sets out additional provisions which apply to particular types of services.

## 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Terms:

**Acceptance Tests:** has the meaning given in Schedule 1, paragraph 1.3.

**Back End Code:** this is the more complex functionality than Front End Code which enables a website to perform processes and store information. It includes databases and programming languages such as PHP and Java.

**Bespoke Items:** has the meaning given in clause 9.2.

**Bespoke Software:** any bespoke software created by us and commissioned by you.

**Business Day:** any day (other than a Saturday or Sunday) when UK banks are normally open for normal business.

**Client Materials:** all Documents, information and materials provided by you relating to the Services including computer programs, data, servers, hosting, reports and specifications, as may be specified in the Order Form or SOW.

**Contract:** your order for Services and our acceptance of it, in accordance with clause 2.2.

**Deliverables:** all Documents, products and materials developed by us pursuant to an Order Form or SOW in any form, including designs, graphics, computer programs (whether created on a bespoke basis or otherwise), data, reports and specifications (including drafts) or any other deliverables specified in the Order Form or SOW.

**Design Concepts:** has the meaning given in Schedule 1, paragraph 4.2.

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Front End Code:** the HTML code and CSS style-sheets, which sit immediately behind the “look and feel” of a website to make the user interface operational. It excludes any databases or programming using languages such as PHP or JavaScript.

**Inappropriate Content:** has the meaning given in Schedule 1, paragraph 1.15.

**Initial Period:** one calendar year from the Commencement Date, which has the meaning given in Schedule 1, paragraph 2.9.

**Intellectual Property Rights:** all patents, right to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Non-Supplier Defect:** has the meaning given in Schedule 1 paragraph 2.3.

**Order Form:** a document generated by us and sent to you for you to consider and, if thought fit, sign and send to us for the purposes of clause 2.2.

**Our Equipment:** any equipment, including tools, systems, cabling or facilities, provided by us or our subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between you and us under which title passes to you.

**Our Manager:** our manager for a Project appointed under clause 5.3

**Personal Data:** shall have the meaning given in the Data Protection Act 1998.

**Pre-existing Materials:** all pre-existing Software, Documents, information and materials provided by us relating to the Services which existed prior to the commencement of the Contract including computer programs, software, content management systems, data, research, reports and specifications or as otherwise specified in the Order Form or SOW.

**Pre-existing Software:** any Back End Code, Front End Code, content management system

or other software which existed prior to the creation of the Bespoke Software.

**Project:** a project as described in an Order Form or SOW.

**Services:** the services to be provided by us under the Contract as set out in an SOW, together with any other services which we provide or agree to provide to you.

**Server:** any computer server administered by or on behalf of us, as referred to in the Order Form or SOW.

**Statement of Work or SOW:** the detailed plan describing a Project and setting out the estimated timetable and responsibilities for the provision of the Services, which may be included as part of the Order Form or, if appropriate, separately agreed in accordance with clause 4.

**Third Party Products:** any third party products or services, including (but not limited to) software (including open source systems), printing, photography, direct mailing, fulfilment, pay-per-click advertising, consumer and market research, brand planning, communication planning, media planning and buying, field marketing distribution (e.g., hand-outs or door-to-door), event planning, organisation and delivery, trademark checking, courier services, supplied as part of the Services, as may be referred to in the Order Form or SOW.

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

**You:** the person, firm or company who purchases Services from us.

**Your Equipment:** any equipment, systems, cabling or facilities provided by you and used directly or indirectly in the supply of the Services.

**Your Manager:** your manager for a Project, appointed in accordance with clause 6.1

**Website:** any website, extranet or intranet to be planned, designed, built and/or hosted by us, as specified in the Order Form or SOW.

**White Label Services:** services provided to you, by us, to create a product for re-sale by you

under your own brand. When White Label Services are being provided, this will be clearly identified in the SOW, scoping document or Order Form.

The provision of a White label service assumes that that the deliverable product supplied by us will not be for use directly by you and is for resale by you to your client.

For example; If an advertising agency cannot provide the level of development required to develop a complex website for a client. We will provide the development service as a White Label service, working under the banner of the advertising agency, to enable them to meet their client's requirements. Including, if required, liaising with the client under the advertising agency brand to create the impression that we are part of their own development team.

White Label services differ from a contract or sub-contract agreement, where under either of these agreements we would be providing the service as us to you with no third party involvement from your client.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 The schedules form part of the Contract and shall have effect as if set out in full in the body of these Terms.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7 A reference to writing or written includes faxes and email.

## 2. Application of Terms

2.1 These Terms shall: (a) apply to and be incorporated into the Contract; and (b) prevail over any inconsistent terms or conditions contained, or referred to, in your purchase order, confirmation of order, Order Form, SOW, or implied by law, trade custom, practice or course of dealing.

2.2. Delivery to us of your purchase order, Order Form or SOW signed by you, constitutes an offer by you to purchase Services specified in it on these Terms. No offer or purchase order placed by you shall be deemed accepted by us other than by our express written acceptance, at which point a contract for the supply and purchase of those Services on these Terms will be established. Your standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order, Order Form or other Document shall not govern these Terms or the Contract.

2.3 Estimates and quotations are given by us on the basis that no agreement or Contract shall come into existence except in accordance with clause 2.2.

### 3. Commencement

3.1 The Services supplied under the Contract shall be provided by us after we have accepted your order in accordance with clause 2.2. and, if required, we have formulated a separate SOW in accordance with the provisions of clause 4 below.

### 4. Statement of Work

4.1 SOW(s) may be included as part of the Order Form, but if a separate SOW is required, it shall be agreed in the following manner:

(a) unless otherwise agreed by us, you shall provide us with a written brief setting out your requirements and specifications of the Services which you are requesting from us, including a description of what work is to be done, any dates by which it or each stage of the work is requested to be started and finished, Deliverables, Client Materials and such other information as we may request to allow us to prepare a draft SOW.

(b) we shall, as soon as reasonably practicable,

provide you with a draft SOW, which shall be expressly entitled 'Statement of Work'; and

(c) we and you shall discuss and agree the draft SOW and when it has been agreed, you shall sign a copy of it and return it by email or post to us and it shall become subject to these Terms. Any subsequent SOWs to which you agree, will be subject to the then current set of Terms, a copy of which can be provided on request.

For the avoidance of doubt, no document shall be a SOW unless it is expressly entitled 'Statement of Work' and agreed by both you and us.

4.2 Once the SOW has been agreed and signed in accordance with clause 4.1(c), no amendment shall be made to it except in accordance with clause 7 and clause 16.

4.3 In the case of any conflict between an SOW and a previous Order Form, the SOW shall prevail.

**5. Our Obligations** 5.1 We shall perform the Services with reasonable skill and care and we shall use reasonable endeavours to provide the Services and to deliver the Deliverables to you in accordance in all material respects with the Order Form and SOW.

5.2 We shall use reasonable endeavours to meet any performance dates specified in the Order Form or SOW, but any such dates shall be estimates only and time for delivery shall not be of the essence of the Contracts.

We will install contingencies such that in the event that we are unable to meet proposed deadlines for project stages or delivery.

If staff become unavailable during the life of the project we will engage contract replacements to fulfil our obligations and meet our delivery targets.

If delivery of a project stage or delivery is deemed unachievable we will notify the client as soon as this becomes apparent with a view to agreeing a way forward.

5.3 We shall, if we deem necessary, appoint Our Manager in respect of a Project. We shall use reasonable endeavours to ensure that the same person acts as Our Manager throughout the

term of the Project, but we may replace him or her from time where reasonably necessary in the interests of our business.

## 6. Your Obligations

6.1 You shall:

(a) co-operate with us in all matters relating to the Services and appoint Your Manager in relation to a Project, who shall have the authority contractually to bind you on matters relating to that Project, and through whom questions and enquiries relating to the Services or Deliverables will be channelled;

(b) if required for the Project, provide for us in a timely manner and at no charge, such access to your premises, office accommodation, data and such other facilities as reasonably requested by us;

(c) provide, in a timely manner, such Client Materials and other information as we may request and ensure that it is accurate in all material respects;

(d) be responsible (at your own cost) for preparing the relevant premises for the supply of the Services, if required;

(e) inform us of all health and safety rules and regulations and any other reasonable security requirements that apply at the 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 Services and conforms to all standards reasonably requested by us in order for us to perform the Services;

(g) obtain and manage all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation and/or use of Our Equipment, the use of Client 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 Services are to start; and

(h) provide us with written feedback on such stages of the Project as we may specify.

6.2 If you purchase, supply or required specific material use, you shall indemnify us against all

damages, losses and expenses arising as a result of any claim that the Client Materials infringe the Intellectual Property Rights of a third party.

If we purchase, supply or install materials that infringe the Intellectual Property Rights of a third party we will be held responsible for damages, losses and expenses arising as such.

6.3 If our performance of our obligations under the Contract is prevented or delayed by any act or omission by you, your agents, sub-contractors or employees, we shall not be liable for any costs, charges or losses sustained or incurred by you arising directly or indirectly from such prevention or delay. We reserve the right to invoice you for any expenses reasonably incurred by us as a result of such delays.

6.4 You shall not, without our prior written consent, at any time from the date of the Contract to the expiry of six months after the last date of supply of the Services, solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged as our employee or sub-contractor of ours in the provision of the Services.

6.5 Any consent given by us in accordance with clause 6.4 shall be subject to you paying to us a sum equivalent to the higher of: (i) 30% of the then current annual remuneration of our employee or sub-contractor; (ii) the sum we initially paid to a recruitment agency upon the appointment of the relevant employee or sub-contractor; or (iii) 30% of the annual remuneration to be paid by you to that employee or sub-contractor.

## 7. Change Control

7.1 Your Manager and Our Manager shall make contact at least once every month, (or at such other intervals as you or we shall request), to discuss matters relating to the Services and Deliverables. If either party wishes to increase the scope, it shall submit details of the requested change to the other in writing.

7.2 If either party requests an increase in the scope or nature of the Services, we shall, within a reasonable time, provide a written estimate to you of:

(a) the likely time required to implement the

change;

(b) any variations to our charges arising from the change;

(c) the likely effect of the change on the Order Form or SOW; and

(d) any other impact of the change on the terms of the Contract.

7.3 We may, from time to time and without notice, change the Services in order to comply with any applicable safety, statutory, regulatory or technical requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If we request a change to the scope of the Services for any other reason, you shall not unreasonably withhold or delay consent to it provided that such changes do not materially affect the nature or quality of the Services.

7.4 If you wish us to proceed with any changes in scope requested by you, we have no obligation to do so unless you have accepted the necessary variations to our charges, the Order Form, SOW, and any other relevant terms of the Contract to take account of the change as specified in writing.

Changes in scope will be chargeable on an hourly rate based on our current hourly rate. An estimate of time / order of costs will be issued prior to commencement of work.

7.5 We may charge for our time spent in assessing a request for change from you on a fixed cost basis in accordance with clause 8.

## 8. Charges and Payments

8.1 The total price for the Services shall be the amount set out in the Order Form or SOW.

8.2 The price stated in the Order Form or SOW is an estimate based on certain assumptions - that the Project proceeds without undue or unforeseen complication, that the approach of everyone involved is reasonably constructive, efficient, decisive and expeditious, and that the scope of the Services remains as specified in the Order Form and/or SOW.

8.3 The total price shall be paid to us, (without deduction or set-off), in full or in any instalments as are set out in the Order Form or

SOW. At the end of a period specified the Order Form or SOW in respect of which an instalment is due, we shall invoice you for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in clause 8.4.

8.4 Any fixed price and daily rate contained in the Order Form or SOW excludes:

(a) Third Party Software Products reasonably and properly provided by third parties and required by us for the supply of the Services, when requested or agreed by you that third party Services or Products are required. This is limited to software that provides a Service outside of the Services provided by the Order Form or SOW.

Such third party services or software shall be invoiced by us; and

(b) VAT, which we shall add to our invoices at the appropriate rate, where applicable.

8.5 Unless agreed otherwise in the Order Form or SOW, you shall pay each invoice submitted to you by us, within 30 days of receipt in full and in cleared funds.

8.6 We shall be entitled to increase any recurring fees specified in the Order Form or SOW annually in line with the Consumer Price Index.

8.7 Without prejudice to any other right or remedy that we may have, if you fail to pay us any sums due under the Contract on the due date, we may:

(a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of The Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgement and we may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or

(b) Suspend all Services until payment has been made in full.

8.8 Time for payment shall be of the essence of the Contract.

8.9 All sums payable to us under the Contract



shall become due immediately on its termination, despite any other provision. This clause 8.9 is without prejudice to any right to claim for interest under the law, or any such right under this agreement or the Contract.

8.10 We may, without prejudice to any other rights we may have, set off any of your liability to us against any of our liability to you.

8.11 Any deposits or initial payments are non-refundable, save as otherwise agreed by us in writing.

## 9. Intellectual Property Rights

9.1 As between you and us, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by us. Subject to clauses 9.2, and 9.3, and to payment by you of all sums due to us under any Contract, we:

(a) transfer irrevocably to you ownership of all Intellectual Property Rights in the Bespoke Items on a royalty free basis, post termination of the contract / completion of the project.

9.2 For the purposes of this clause 9 'Bespoke Items' means: any graphic design, such as logos and/or Website design/ Website development forming part of the final deliverable under the provisions of Schedule 1. Notwithstanding anything to the contrary in these terms or any Order Form or SOW, specifically excluded from Bespoke Software are:

(a) any open source systems used in the Bespoke Software.

9.3 You acknowledge that your use of any Pre-existing Materials in which we do not own the Intellectual Property Rights (such as any Third Party Products):

- (a) is conditional on our obtaining a licence from the relevant third party on such terms as will entitle us to licence such rights to you; and
- (b) shall be subject to the terms of such licence.

## 10. Confidentiality and Our

### Property

10.1 You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to you by us, our employees, agents or sub-contractors and any other confidential information concerning our business or our products or services which you may obtain. You shall restrict disclosure of such confidential material to such of your employees, agents or sub-contractors as need to know the same for the purpose of discharging your obligations to us, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind you.

10.2 We shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to us by you, your employees, agents or sub-contractors and any other confidential information concerning your business or your products or services which we may obtain. We shall restrict disclosure of such confidential material to such of our employees, agents or sub-contractors as need to know, the same for the purpose of discharging our obligations to you, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind us.

10.3 All materials, equipment and tools, drawings, specifications and data supplied by us to you (including Pre-existing Materials and Our Equipment) shall, at all times, be and remain our exclusive property, but shall be held by you in safe custody at your own risk and maintained and kept in good clause by you until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.

10.4 The provisions of clauses 10.1 and 10.2 shall not apply to any confidential information which:

- (a) at the time of receipt by a party is in the

public domain not as a result of a breach of this agreement;

(b) is lawfully received by the party concerned from a third party on an unrestricted basis (provided always that each part shall remain obligated to comply with Clause 10 if such third party is in breach of any obligation of confidentiality owed by the third party);

(c) is already independently and lawfully known to the party concerned before receipt hereunder; or

(d) as may be required by law, court order or any governmental or regulatory authority.

10.5 This clause 10 shall survive termination of the Contract, however arising.

## 11. Limitation of Liability

11.1 This clause 11 set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:

(a) any breach of the Contract;

(b) any use made by you of the Services, the Third Party Products, the Deliverables or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

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

11.3 Nothing in these Terms limits or excludes our liability:

(a) for death or personal injury resulting from negligence; or

(b) for any damage or liability incurred by you as a result of our fraud or fraudulent misrepresentation.

11.4 Subject to clause 11.2 and clause 11.3:

(a) we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits however arising under this Contract;

(b) we shall not be liable whether in tort

(including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of business and/or similar losses however arising under this Contract;

(c) we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any depletion of goodwill and/or similar losses however arising under this Contract;

(d) we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss, corruption or unauthorised third party exposure of data or information and/or similar losses however arising under this Contract, unless this is a direct result of negligence from us, our employees or sub-contractors, whereby appropriate restitution will be applicable;

(e) we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any pure economic loss and/or similar losses however arising under this Contract;

(f) we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any special, indirect or consequential loss, costs, damages, charges or expenses and/or similar losses however arising under this Contract;

(g) we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any special, indirect or consequential loss, costs, damages, charges or expenses and/or similar losses however arising in respect of Third Party Products.

11.5 Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of any Contract shall be limited to the price paid for the Services for the particular element of the Project to

which the claim relates. Liability will remain for a period of 6 months post completion of the Project.

## 12. Data Protection

12.1 You acknowledge and agree that details of your name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of us in connection with the Services.

12.2 We warrant that, to the extent we process any Personal Data on your behalf:

- (a) we shall act only on your instructions; and
- (b) we have in place appropriate technical and organisational security measures against unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

12.3 You warrant and undertake to us that:

- (a) Your Personal Data has been and shall be obtained and processed (insofar as your Personal Data has been processed) lawfully;
- (b) the Services to be provided by us will be entirely consistent with, and appropriate to the specified and lawful purposes, which you have notified under the Data Protection Act 1998 for your Personal Data (Notified Purposes);
- (c) you have not and will not, during the continuance of any Contract use, disclose your Personal Data or any part of it, in a manner incompatible with the Notified Purposes;
- (d) your Personal Data is adequate, relevant and not excessive in relation to the Notified Purposes; and
- (e) your Personal Data is accurate and you shall keep your Personal Data fully up to date at all times during the continuance of any Contract.

12.4 You shall indemnify us against any loss or damage which we may sustain or incur as a result of any breach by you of the provisions of this clause 12.

## 13. Termination

13.1 Unless the nature of the Services to be provided requires otherwise and is specified in the Order Form or SOW, subject to clause 13.2 and Schedule 1, the Contract shall terminate

automatically on completion of the Project in accordance with the Order Form or SOW.

13.2 Without prejudice to any other rights or remedies which the parties may have and where the nature of the Services to be provided is on an on-going basis, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party commits a material breach of any of these Terms or the Contract and, (if such a breach is remediable), fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party;
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
- (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets;
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13.3 On termination of these Terms or the Contract for any reason:

(a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt;

(b) you shall (unless otherwise agreed by us), within 10 Business Days return to us all of our equipment, Pre-existing Materials and Deliverables (other than Bespoke Items which have transferred to you under clause 9.1(b)). If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned or repossessed, you shall be solely responsible for their safe keeping;

(c) we shall use our best endeavours to make available to you for a period of three months after termination any design items have been prepared for you as part of the Services, but you acknowledge that we cannot retain such materials indefinitely and any request for such design items after the said three month period may not be possible or may be subject to additional fees for retrieving such materials from archiving or recreating deleted files; and

(d) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## 14. Force Majeure

We shall have no liability to you under the Contract if we are prevented from or delayed in performing our obligations under the Contract or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including strikes, lock-outs or other industrial disputes (whether involving our workforce or that of any other party), failure of a utility service or transport network, power outage or electrical failure, theft of computers or related equipment, hostile computer act, telecommunications failures, non-availability of third party data centres, act of God, war, riot, civil commotion, malicious damage, compliance with any law or

governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers of sub-contractors (including the suppliers of any Third Party Products.)

## 15. Publicity

15.1 With the exception of White Label Services for our marketing purposes, you agree that we may include your company name, any Design Concepts (whether or not in draft, accepted or final form) in our portfolio and marketing materials, to show clients and potential clients examples of our work.

15.2 With the exception of White Label Services and except in the case of any client or potential client that is a material competitor of yours, you agree that we may demonstrate Bespoke Software to clients and potential clients.

15.3 With the exception of White Label Services and subject to clause 15.1 above, you agree that we may make announcements from time to time via online channels such as, but not limited to Twitter, Facebook and LinkedIn, that our services have been provided to you or that a particular Website or campaign is live.

## 16. Variation

Subject to clause 4 and clause 7, no variation of the Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.

## 17. Waiver

17.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

17.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## 18. Severance

18.1 If any provision, (or part of a provision), of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

18.3 The parties agree, in the circumstances referred to in clause 18.1 and if clause 18.2 does not apply to attempt to substitute for any invalid, enforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

## 19. Status of Pre-Contractual Statements

These Terms, together with the documents referred to herein, constitute the entire agreement and understanding between the parties in respect of the matters dealt with in these Terms, and supersede, cancel and nullify any previous agreement between the parties in relation to such matters, notwithstanding the terms of any previous agreement or arrangement, expressed to survive termination. Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding, (whether in writing or not), of any person, (whether party to these terms and clauses or not), relating to the subject matter of the Contract, other than as expressly set out in the Contract. Nothing in this clause shall operate to exclude any liability for fraudulent misrepresentation.

## 20. Assignment

20.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under the Contract.

20.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with any portion of our rights or obligations under the Contract excluding the Contract as a whole.

## 21. No Partnership or Agency

21.1 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as an agent for the other, and neither party shall have authority to act in the name of, on behalf of, or otherwise to bind the other in any way, (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power), unless agreed by you and us prior to commencement of the Contract.

## 22. Rights of Third Parties

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

## 23. Notices

23.1 Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract, (or such other address, fax number or person as the relevant party may notify to the other party), and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery.

23.2 A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of pre-paid first class post or recorded, 48 hours from the date of posting and, if deemed receipt under this clause 23 is not within business hours, (meaning 9.00am to 5.00pm on a Business Day), at 9.00am on the first Business Day following delivery.

23.3 To prove service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.

## 24. Dispute Resolution

24.1 If any dispute arises in connection with these Terms or any Contract, directors or other senior representatives of the parties with authority to settle the dispute will, within 21 days of a written request from one party to the other, meet at our offices in a good faith effort to resolve the dispute.

## **25. Governing Law and Jurisdiction**

25.1 These Terms, the Contract and any dispute or claim arising out of or in connection with them or their subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

25.2 Subject to clause 24, the parties

irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms, the Contract or their subject matter.

## **Schedule 1**

### **1. Website Design and Hosting Services**

1.1 Where any of the Services to be provided by us, as specified in the Order Form or SOW, comprise website design, the provisions of this paragraph 1 shall apply.

1.2 If we are to provide website design Services we will design, develop and deliver the Website and, where provided in the Order Form or SOW, host and support the Website on a Server.

1.3 Once we have completed the design and development of the Website (the URL of which is specified in the Order Form or SOW), we shall run such acceptance tests as we shall reasonably determine (Acceptance Tests) to ascertain whether the Website complies in all material respects with the Order Form or SOW.

1.4 Acceptance of the Website shall occur when the Website has passed the Acceptance Tests.

1.5 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission by you, or by one of your sub-contractors or agents for whom we have no responsibility (Non-Supplier Defect), the Website shall be deemed to have passed the Acceptance Tests, notwithstanding such Non-Supplier Defects.

1.6 We shall provide you with assistance reasonably requested by you in remedying such Non-Supplier Defects by supplying such additional services or products as we see fit in our sole discretion. You shall pay us in full for all such additional services and products at our then current fees and prices.

1.7 Acceptance of the Website shall be deemed to have taken place upon the occurrence of any of the following events:

(a) you use any part of the Website for any revenue-earning purposes or to provide any services to third parties other than for test purposes;

(b) the Website is or can be accessed and/or viewed by the public for more than 5 Business Days; or

(c) you delay the start of the relevant Acceptance Tests (including any retests) for a period of ten Business Days from the date on which we are ready to commence running such Acceptance Tests or retests. For the avoidance of doubt this period includes any delay in your uploading of your content to the Website via the content management system.

1.8 We warrant that the Website will perform in accordance with the Order Form or SOW for a period of three months from acceptance. If the Website does not so perform, we shall, for no additional charge, carry out any work necessary in order to ensure that the website complies in accordance with the Order Form or SOW. This is not applicable where the website does not so perform due to browser or operating system updates and new releases as illustrated in 1.11.

1.9 The warranty set out in paragraph 1.8 shall not apply to the extent that any failure of the Website to perform in accordance with the Order Form or SOW is caused by you or your Client Materials.

1.10 We are not liable for any time or expenses associated with your Project Manager or otherwise incurred by you in testing a Website or in providing any input or feedback to us at any stage of the project.

1.11 Websites we produce will be supported in Microsoft Internet Explorer 9+, Apple Safari 5+, Mozilla Firefox 10+, and Google Chrome 20+. New browser versions introduced after Acceptance are excluded. Certain older browsers (specifically Microsoft Internet Explorer 7 and 8) are incapable of rendering some components of modern website designs and will only be supported by a special request on the Order Form or SOW..

1.12 All Intellectual Property Rights in the Website are owned in accordance with the provisions of clause 9 of these Terms.

1.13 Where we have so agreed in the Order Form or SOW we shall update the Website with Client Materials provided from time to time by you subject to you paying such hourly rate as shall be agreed in the Order Form or SOW.

1.14 Where we have designed or built the

Website and with your written agreement, we may include a statement indicating the website has been planned, designed or built by us as an active hyperlink to our website or another website owned by us as we see fit for a minimum period of twenty-four months.

1.15 We will build our software and web applications to meet PCI compliance requirements. PCI Compliance requirements cannot be fulfilled from the software alone. Dependency for PCI Compliance is with the server/network infrastructure and configuration.

If we are providing hosting services to you for our software and web applications, we will guarantee full PCI Compliance.

If you are providing hosting services for our software and web applications, PCI Compliance will be dependent on your Server/Network infrastructure and configuration.

We will work with your PCI Compliance testing partner to ensure our software and web applications attain the required standard.

1.16. Where we have so agreed in the Order Form or SOW we shall update the Website with all relevant Security Patches and updates provided by the 3<sup>rd</sup> party for the security of the Open Source software used on the website for the duration of the maintenance contract illustrated in the Order Form or SOW.

## 2. Hosting and Support Services

2.1 Where any of the Services to be provided by us, as specified in the Order Form or SOW, include hosting and/or support services, the provisions of this paragraph 2 shall apply. For the purposes of this paragraph 2, 'hosting' and 'Website hosting' shall include your online use of the delivered website solution if this has been specified in the Order Form or SOW.

2.2 Where you gain access to our Servers to update or otherwise access the Website other than via any Pre-existing Software or other technology provided by us, if any problems arise by reason of your actions, we are under no obligation to provide support to you, although

we may be prepared to do so, subject to your payment of our standard support charges.

2.3 You shall ensure that any Client Materials to be included on the Website do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights (Inappropriate Content)).

2.4 You acknowledge that we have no control over any content placed on the Website by visitors to the Website and we do not purport to monitor the content of the Website. We reserve the right to remove content from the Website where we reasonably suspect that such content is Inappropriate Content.

2.5 You shall indemnify us against all damage, losses and expenses arising as a result of any action or claim that the Client Materials constitute Inappropriate Content.

2.6 On expiry or termination of the Contract, we shall:

(a) return to you your Client Materials and shall provide to you with an electronic copy of the Website, (including all content on the Website); and

(b) provide such assistance as is reasonably requested by you to transfer the hosting of the Website from us to you or to another service provider, subject to payment of fees, (at our then applicable standard hourly rates), and our reasonable expenses.

2.7 Whilst we shall use our best endeavours to ensure that the Website, (if hosted by or via us), is available at all times, you acknowledge that such hosting is subject to the right of any third party provider of connectivity of any hosting services to the Internet to temporarily suspend such connection, to make any modification, change, addition to, or replacement of that third party's equipment, network or software where this is required to confirm with any applicable safety or any other statutory or legal requirements, or at any other time. Accordingly, the provision of hosting services by us shall be



on and subject to the terms of the WebFusion Hosting Service Level Agreement which is available on the WebFusion website, as such Service Level Agreement may from time to time be amended by WebFusion.

2.8 You acknowledge that it is impossible to provide any Website hosting services free of faults or uninterrupted and that we do not give any undertaking to do so.

2.9 The period of Website hosting commences on the first day that the Website is provided for Acceptance Tests (Commencement Date), and shall continue, unless the Contract is otherwise terminated in accordance with these Terms, until either party gives the other party written notice of termination, such notice being of a period of not less than 90 days and which must expire on an anniversary of the Commencement Date. Any specific and differing terms detailed in the Order Form or SOW replace or, where no conflicts occur, are in addition to the terms of this clause.

2.10 You accept that website visitor traffic levels may vary and that we may deem it necessary to change the hosting server setup to handle increases or larger than anticipated levels of traffic. You accept that this may incur costs, and that additional charges may be levied to you to cover such upgrades. Such additional costs would be subject to your prior written approval.

2.11 Helpdesk support, if included as part of the Services and specified on the Order Form or SOW, means you may call to obtain advice on using our content management system to add content to any Websites and to report faults where any Website does not appear to be functioning correctly up to the amount of time allocated in the Order Form or SOW. Thereafter each support request is charged at £17 per request in 15 minute increments. The provision of helpdesk services by us shall be as set out in our Technical Support and Helpdesk Policy which is available on request; as such policy may from time to time be amended by us.

2.12 Technical support, if included as part of the Services and specified in the Order Form or SOW, includes the fixing of bugs identified during and after the three month warranty

period, resolution of technical issues associated with our content management system up to the amount of time allocated in the Order Form or SOW. Thereafter each support request is charged at £17 per request in 15 minute increments. The provision of technical support services by us shall be as set out in our Technical Support and Helpdesk Policy which is available on request; as such policy may from time to time be amended by us.

2.13 The period of technical and Helpdesk support, as specified in the Order Form or SOW, commences on the day that the Website has passed its Acceptance Tests, (Commencement Date), and shall continue, unless the Contract is otherwise terminated in accordance with these Terms, until either party gives the other party written notice of termination, such notice being of a period of not less than 30 days and which must expire on the anniversary of the Commencement Date. Any specific and differing terms detailed in the Order Form or SOW replace or, where no conflicts occur, are in addition to the terms of this clause.

### **3. Trade Mark and Domain Name Services**

3.1 Where any of the Services to be provided by us, as specified in the Order Form or SOW, comprise advice and services in relation to domain name registration or trade mark registration, the provisions of this paragraph 3 shall apply.

3.2 Where explicitly stated and agreed in the Order Form or SOW we shall use our best endeavours to obtain registration of any domain name(s) or trade mark(s) requested by you. 3.3 You warrant that you are the owner, or duly authorised licensee, of all Intellectual Property Rights and other rights in respect of any trade mark or domain name for which you request we assist you to obtain registration.

3.4 You acknowledge that we cannot guarantee that any name or design requested by you will be available or approved for use and/or registration. You are required to carry out your own enquiries in this respect, although we may assist you at your request and cost.

3.5 We reserve the right to require you to select a replacement domain name or trade mark and we may suspend the provision of the Services if, in our opinion, there are reasonable grounds for us to believe that your choice of name is, or is likely to be, in breach of the provisions of this paragraph 3.

3.6 We do not represent, warrant or guarantee that any domain name or trade mark applied for by you, or on your behalf, will be registered in your name or is capable of being registered by you, or that use of such trade mark or domain name by you will not infringe any Intellectual Property Rights or other rights of any third party. Accordingly, we will not be liable for any action taken by you in respect of any requested domain name or trade mark prior to registration. Any fees payable by us for the Services shall be payable in any event and are not conditional upon obtaining any such registrations.

3.7 The registration of any domain name or trade mark and its on-going use is subject to the relevant naming authority's or trade mark registration body's terms and conditions, as appropriate, and you undertake to comply with such terms and conditions.

3.8 You acknowledge that your contact details, including details which may constitute Personal Data, (such as name, address, telephone numbers and email address), will be passed to the relevant domain naming authority. You acknowledge that it may be a condition for registration with such a naming authority for such information to appear on that naming authority's publicly-accessible 'WHOIS' database and you hereby consent to your Personal Data being used in such a manner.

3.9 You hereby irrevocably waive any claims against us in respect of any decision by any trade mark registration body or domain naming authority to refuse to register any trade mark or domain name and, without limitation, you acknowledge that any application or other administration fee payable is non-refundable in any event.

3.10 We accept no responsibility for the use of any domain name or trade mark by you and we

shall take no part in any dispute between you and any third party in respect thereof. We reserve the right, on becoming aware of a dispute concerning a domain name, at our sole discretion and without giving any reason, to either suspend or cancel the relevant service associated with the domain name, and/or to make such representations to the relevant naming authority as we deem appropriate.

3.11 The period during which we provide Services under this paragraph 3 commences on the date specified in the relevant Order Form or SOW (Commencement Date), and shall continue, unless the Contract is otherwise terminated in accordance with these Terms, until completion of the Project in accordance with the Order Form or SOW.

Any specific and differing terms detailed in the Order Form or SOW replace or, where no conflicts occur, are in addition to the terms of this clause.

## 4. Design Services

4.1 Where any of the Services to be provided by us, as specified in the Order Form or SOW, comprise graphic and other design-related services, including website interface design, the provisions of this paragraph 4 shall apply.

4.2 Within 20 Business Days of our acceptance of your order in accordance with Clause 2.2 of the main Terms or, if relevant, approval of the SOW in accordance with the provisions of Clause 4 of the main Terms or at such other time as agreed by you and by us in the Order Form or SOW, we shall provide you with a draft of our suggested designs, whether in storyboard, graphic, report or electronic format (Design Concepts).

4.3 Within 10 Business Days of your receipt of the draft Design Concepts, or at such other time as agreed by both parties in the Order Form or SOW, you shall notify us in writing either:

(a) of your approval of one of the draft Design Concepts, in which case the selected draft Design Concept shall become the final Design Concept; or

(b) of suggested changes which you require to the draft Design Concepts, in which case we

shall, within a further 10 (approximately) Business Days provide you with a further draft of the Design Concepts incorporating the suggested changes.

4.4 You acknowledge that any changes to the Design Concepts arising in respect of paragraph 4.3(b) may incur additional charges, if the time or number of changes engaged by us in carrying out such changes, exceeds the total time or number of changes allocated for Design Concept reviews, as set out in the Order Form or SOW.

4.5 If you reasonably believe that the further draft of the Design Concepts provided in accordance with paragraph 4.3(b) is not satisfactory, you may at your own cost revise the draft Design Concepts and present them to us within five Business Days of the receipt of the revised draft. Upon such receipt we will notify you in writing within a further five Business Days whether such suggested alterations to the draft Design Concepts are feasible in whole or in part and the additional cost implications, if any, of the changes proposed by you.

4.6 Within two Business Days of your receipt of our comments under paragraph 4.3 above you shall either:

(a) approve the suggestions and the amended draft Design Concept selected by you shall be the final Design Concept; or (b) suggest further amendments to the draft Design Concepts in accordance with the provisions of paragraph 4.5 and that procedure shall continue until such time as the final Design Concept has been approved in accordance with the provisions of this paragraph 4.6.

4.7 You are required to email a copy of the final artwork comprising the final Design Concept back to us, thereby signifying your acceptance of it. In the event that you have not so responded within 10 Business Days indicating your acceptance or rejection, you will be deemed to have accepted the final Design Concept.

4.8 All Intellectual Property Rights in the final Design Concept shall be transferred to you following payment of all sums due from you to us. Following any such assignment, you hereby grant to us a non-exclusive licence of such

Intellectual Property Rights in the final Design Concept for the purposes of providing any future or outstanding Services in accordance with the terms of the relevant Order Form or SOW. We retain the ownership of all Intellectual Property Rights in all Design Concepts other than the final Design Concept, and you acknowledge that we can use the retained Design Concepts for any purpose or other client.

4.9 You shall be responsible for notifying us prior to our acceptance of your order in accordance with clause 2.2 of the main Terms or, if later, before the preparation of the relevant SOW, of any specific advertising requirements or restrictions relevant to the particular profession, trade or industry in which you operate insofar as they affect the Services we are to provide.

We shall have no obligation to investigate or verify any such advertising requirements or restrictions and we shall have no liability to you in the event that any information provided by you to us in this respect proves to be inaccurate.

4.10 The period during which we provide any Services under this paragraph 4 shall commence as stated in the relevant Order Form or SOW and shall continue, unless the Contract is otherwise terminated in accordance with these Terms, until completion of the Project in accordance with the Order Form or SOW. Any specific and differing terms detailed in the Order Form or SOW replace or, where no conflicts occur, are in addition to the terms of this clause.

## **5. Marketing Services**

5.1 Where the Services to be provided (whether by us or as Third Party Products) comprise marketing aspects (Marketing Services), including but not limited to pay-per-click advertising, search engine optimisation, social media, advertising, marketing strategy and campaign work, you acknowledge that we cannot guarantee or quantify the results of any such campaign and you use such Marketing Services at your own risk.

5.2 The period during which we provide Marketing Services commences on the date specified in the relevant Order Form or SOW (Commencement Date), and shall continue,

unless the Contract is otherwise terminated in accordance with these Terms, until either party gives the other party written notice of termination, such notice being of a period of:

(a) where the Order Form or SOW specifies a quarterly fee for such Marketing Services, not less than 45 days and which must expire on the last day of a quarter; or

(b) where the Order Form or SOW specifies an annual fee for such Marketing Services, not less than 90 days and which must expire on an anniversary of the Commencement Date. Any specific and differing terms detailed in the Order Form or SOW replace or, where no conflicts occur, are in addition to the terms of this clause.

5.3 Where the Services result in the creation of any additional Intellectual Property Rights (such as, but not limited to, Intellectual Property Rights in software or interactive applications) not referred to in these Terms, the Order Form or the SOW, such Intellectual Property Rights shall, unless we agree in writing, vest automatically in us. Any licence of such Intellectual Property Rights shall be on such terms as you and we shall agree.

## 6. Third Party Products

6.1 Where we agree as part of the Services to provide Third Party Products, these shall be supplied in accordance with the terms and conditions stipulated by the relevant licensor or third party. By using these Third Party Products, you agree to be bound by and comply with the terms of those separate agreements.

We give no warranty in relation to and have no liability in connection with your use of these Third Party Products.

6.2 Whilst we shall take all reasonable endeavours to ensure that any Third Party Products are supplied to your satisfaction, such Third Party Products are supplied on an “as is” basis and we shall have no liability in this respect and you are responsible for checking compliance with your requirements and seeking any legal redress against the supplier in the event that any problems arise.

6.3 The estimated costs of any such Third Party Products included in the Order Form or SOW are

for guidance purposes only and you shall be liable to indemnify us for our full costs in this respect.

6.4 Where the Third Party Products include photography, illustration, painting or digital animation, your use of such photography, illustration, painting or digital animation will usually be on a copyright licence basis only, unless otherwise agreed by us in writing, and you undertake to comply with the terms of such licence.

6.5 Where the Third Party Products include printing, you acknowledge that such services are prone to errors and you shall be responsible for checking any mock-ups or ‘pdf’ documents provided to you.

6.6 Where the Third Party Products include the provision of direct mailing services, you are responsible for complying with the terms and conditions of the data supplier as regards the use and any subsequent use of mailing lists obtained.

6.7 If you choose to deliver video content from the Website (or any other website) in H.264 encoding (for Apple devices), you acknowledge and agree that you will be liable to pay any resulting patent licensing royalties.

6.8 You acknowledge and agree that you will be liable to pay any licence fees or other expenses incurred as a result of the use of fonts and imagery specified by you.