

WHELDON COMPUTING LIMITED TERMS AND CONDITIONS

**SECTION A: PROVISIONS APPLYING TO ALL SECTIONS OF THE AGREEMENT**

**1 INTERPRETATION**

1.1 In these Conditions the following words and expressions shall (unless the context shall otherwise require) bear the following meanings:

“Agreement” means the agreement between us and you governing our provision of the Services and/or the Equipment to you, including the customer order form, these Conditions and all specifications, plans, drawings and other documentation referred to in the same or attached hereto;

“Charges” means our fee for providing the Services and/or the Equipment as detailed on the customer order form;

“Code of Conduct” means the code of conduct for acceptable Internet usage published by us from time to time, the current version of which is available on our website or such other website as we may notify to you from time to time.

“Content” means text, graphics, logos, photographs, images, moving images, sound, illustrations and other material featured, displayed or used, or to be featured, displayed or used, on the Website,

“Documentation” means the user manuals, technical documentation and training manuals to enable a reasonably skilled computer operator to use the Website;

“Due Notice” means the period of notice (if any) for early termination of the Agreement specified on the customer order form;

“Equipment” means the computer hardware equipment (if any) to be provided by us to you, as described on the customer order form;

“Initial Period” means the initial period (if any) specified in the custom order form;

“Internet” means the global network of computer systems, including without limitation, the World Wide Web;

“IPR” means any and all patents, trademarks, rights to domain names, rights in designs, copyrights and database rights (whether registered or not and any applications to register or rights to apply for registration of any of the forgoing) rights in confidential information and all other intellectual property rights of a similar or corresponding character which may subsist now or in the future in any part of the world;

“New Software” means all the Software other than Our Software and the Third Party Software;

“Our Software” means that part of the Software that is our proprietary software;

“Server” means the computer(s) upon which the Website will reside and operate;

“Services” means the services or part thereof to be provided by us to you under the Agreement, as detailed in the customer order form;

“Software” means all human readable or computer or other machine readable data, technical specifications, logic, logic diagrams, flow charts, orthographic representations, algorithms, modules, sub routines, file structures, coding sheets, coding, source or object codes, listings, test data, test routines, diagnostic programs or other materials relating to or comprising part of the Website and required to enable the website to operate properly, efficiently and effectively;

“Specification” means the detailed specification for the Website in the customer order form as amended from time to time;

“Start Date” means the date on which we begin to provide the Services to you;

“Third Party Software” means that part of the Software that belongs to a third party;

“User Training” means any agreed training we are to provide you to enable reasonably skilled employees to operate and use the Website and the Software in accordance with the Specification;

“Website” means the website written in HyperText Markup Language or another internet compatible language and with pages linked using the hypertext transfer protocol, to be designed, developed and installed by us in accordance with the Specification or (if different) the website to be the subject of the hosting services under Section C;

“Working Day” means any day except Saturday, Sunday and statutory holiday;

“us” or “we” means Wheldon Computing Limited (registered number 3556454) whose registered office is at 115 Chandos Street, Netherfield, Nottingham NG4 2LR (and “our” shall be construed accordingly); and

“you” means the person, firm, company or other entity entering into the Agreement with us (and “your” shall be construed accordingly).

1.2 These Conditions are the only conditions upon which we are prepared to deal with you, and they shall govern the Agreement to the entire exclusion of any other express terms and conditions.

1.3 The headings in these Conditions are inserted only for convenience and shall not affect its construction.

- 1.4 In the event of a conflict between the provisions of these Conditions and the customer order form, the customer order form shall prevail unless otherwise expressly stated.

## **2 BASIS OF THE AGREEMENT**

- 2.1 In consideration of the payment of the Charges, we shall provide the Services and/or the equipment subject to the terms and conditions set out in these Conditions.

## **SECTION B: SOFTWARE DEVELOPMENT**

### **3 BASIS OF THIS SECTION**

- 3.1 This Section B shall apply where you have asked us to design, develop and Install bespoke Software as detailed in the customer order form (“the Software Service”).

### **4 PRINCIPAL DUTIES**

- 4.1 We shall from the Start Date:
  - 4.1.1 Advise you in relation to all matters arising in the course of developing and installing your bespoke Software and where appropriate recommend changes to the Specification;
  - 4.1.2 Where necessary, design, write and supply Software to enable the Software to perform substantially in accordance with and conform substantially to the Specification; and
  - 4.1.3 Provide the agreed User Training.
- 4.2 Any Content that you deliver or supply for inclusion in the Software must be delivered to us, where relevant, in the agreed format and you shall ensure that all such Content is correct and shall update it when we require you to do so.

### **5 PROJECT MANAGEMENT**

- 5.1 You shall provide us with all information, documentation and assistance that we reasonably request to enable us to properly provide the Software Service to you under the Agreement. We shall not be liable for any delay in the performance of the Software Service caused by any delay in providing, or inaccuracy of, any such information, documentation or assistance.
- 5.2 To facilitate our provision of the Software Service to you, you shall give our personnel such access to your personal and premises as we may reasonably require to fulfil our duties and obligations. In particular, you shall make available sufficient working space and provide such facilities as we may reasonably require, and advise our personnel of the rules and regulations at your premises. You shall be responsible for the safety of all our employees and agents whilst on your premises for the purposes of providing the Software Service to you.

### **6 VARIATIONS**

- 6.1 You may at any time by written notice request and we may at any time recommend variations to the Software or Specification.

- 6.2 Any amendments or variation to the Software or Specification may only be made with our prior written consent and we may levy an extra charge to you at our then standard hourly or daily rates (in addition to the Charges) to reflect the cost and expenses of any additional work required by us to provide such amendment or variation.

## **7 INSTALLATION:**

- 7.1 You must make every attempt to safeguard your data and other files during installation, when upgrading, or when installing an update. We do not assume responsibility for loss of data or any other losses that result from installation, upgrading, or updating of the software. Hard disks and all data should be backed up on a regular basis and should always be backed up before you begin any installation tasks.

## **8 TESTING AND ACCEPTANCE**

- 8.1 At each agreed milestone we shall submit for your written approval the elements of the Software that we have designed and developed to meet that milestone. Your written approval of our work shall be your acceptance that those elements of the Software conform substantially within the Specification.
- 8.2 Following delivery and installation of the Software, we shall carry out any agreed acceptance tests, or ensure that they are carried out.
- 8.3 If the Software materially fails such acceptance tests and on investigation this proves to be as a result of an error by you, we shall be entitled to charge for the costs of the investigation and making the necessary changes to the Software at our then current hourly or daily rate. If the Software materially fails to pass the acceptance tests for any other reason, we shall (without extra charge) determine the causes of the failure, advise you of them and make any changes to the Software necessary to ensure that the Software will pass the acceptance tests. Following the making of any such changes, we will repeat or procure the repetition of the acceptance tests as is necessary to ensure successful completion of the acceptance tests.
- 8.4 We shall use all reasonable endeavours so that successful completion of the Software Service in accordance with the development timetable but all milestone delivery dates are non-binding estimates, time shall not be of the essence in the provision of the Software Service or any part thereof and we shall not be liable for the consequences of any delay in its or their provision.
- 8.5 Risk of loss or damage to the Software, the Content and/or the documentation shall pass to you upon successful completion of the acceptance tests. Where acceptance tests have not been agreed by us in writing, such risk of loss or damage shall pass to you upon delivery of the Software to you.

## **SECTION C: WEBSITE DEVELOPMENT**

### **9 BASIS OF THIS SECTION**

- 9.1 This Section C shall apply where you have asked us to design, develop and Install your new Website as detailed in the customer order form (“the Website Service”).

## **10 PRINCIPAL DUTIES**

10.1 We shall from the Start Date:

10.1.1 Advise you in relation to all matters arising in the course of developing and installing your new Website and where appropriate recommend changes to the Specification;

10.1.2 Where necessary, design, write and supply Software to enable the Website to perform substantially in accordance with and conform substantially to the Specification; and

10.1.3 Provide the agreed User Training.

10.2 Any Content that you deliver or supply for inclusion in the Website must be delivered to us, where relevant, in the agreed format and you shall ensure that all such Content is correct and shall update it when we require you to do so.

## **11 PROJECT MANAGEMENT**

11.1 You shall provide us with all information, documentation and assistance that we reasonably request to enable us to properly provide the Website Service to you under the Agreement. We shall not be liable for any delay in the performance of the Web Site Service caused by any delay in providing, or inaccuracy of, any such information, documentation or assistance.

11.2 To facilitate our provision of the Website Service to you, you shall give our personnel such access to your personal and premises as we may reasonably require to fulfil our duties and obligations. In particular, you shall make available sufficient working space and provide such facilities as we may reasonably require, and advise our personnel of the rules and regulations at your premises. You shall be responsible for the safety of all our employees and agents whilst on your premises for the purposes of providing the Website Service to you.

## **12 VARIATIONS**

12.1 You may at any time by written notice request and we may at any time recommend variations to the Website or Specification.

12.2 Any amendments or variation to the Website or Specification may only be made with our prior written consent and we may levy an extra charge to you at our then standard hourly or daily rates (in addition to the Charges) to reflect the cost and expenses of any additional work required by us to provide such amendment or variation.

## **13 TESTING AND ACCEPTANCE**

13.1 At each agreed milestone we shall submit for your written approval the elements of the Website that we have designed and developed to meet that milestone. Your written approval of our work shall be your acceptance that those elements of the Website conform substantially within the Specification.

13.2 Following delivery and installation of the Website, we shall carry out any agreed acceptance tests, or ensure that they are carried out.

- 13.3 If the Website materially fails such acceptance tests and on investigation this proves to be as a result of an error by you, we shall be entitled to charge for the costs of the investigation and making the necessary changes to the Website at our then current hourly or daily rate. If the Website materially fails to pass the acceptance tests for any other reason, we shall (without extra charge) determine the causes of the failure, advise you of them and make any changes to the Website necessary to ensure that the Website will pass the acceptance tests. Following the making of any such changes, we will repeat or procure the repetition of the acceptance tests as is necessary to ensure successful completion of the acceptance tests.
- 13.4 We shall use all reasonable endeavours so that successful completion of the Website Service in accordance with the development timetable but all milestone delivery dates are non-binding estimates, time shall not be of the essence in the provision of the Website Service or any part thereof and we shall not be liable for the consequences of any delay in its or their provision.
- 13.5 Risk of loss or damage to the Website, the Software, the Content and/or the documentation shall pass to you upon successful completion of the acceptance tests. Where acceptance tests have not been agreed by us in writing, such risk of loss or damage shall pass to you upon delivery of the Website to you.

#### **SECTION D: WEBSITE HOSTING**

##### **14 BASIS OF THIS SECTION**

- 14.1 This Section D shall apply where you have asked us to provide a hosting service for your Website or Software (“the Hosting Service”).

##### **15 OUR RIGHTS AND OBLIGATIONS**

- 15.1 We shall install or arrange the installation of your Website on a Server and make your Website available to the public via a connection to the Internet.
- 15.2 In the event that access to your Website exceeds the permitted bandwidth, storage allocation or both (as notified to you), we shall be entitled, in our absolute discretion: to (i) suspend access so the Website; or (ii), move the Website to a different server and/or increase the Charges for the Hosting Service commensurately.
- 15.3 Notwithstanding any other provision in the Agreement, we shall be entitled without notice and at any time, to change the permitted bandwidth or storage allocation for your Website or make any other change to the Hosting Service: (i) required to comply with safety, security or other applicable legal requirements; or (ii) which does not materially effect the quality or nature of the Hosting Service.
- 15.4 We may subcontract the provision of the Hosting Service under Condition 38.1

## **16 YOUR OBLIGATIONS**

- 16.1 You undertake to ensure compliance with our Code of Conduct in relation to all usage of your Website. We are entitled at any time, without notice and without liability, to remove your Website from the Server or bar or restrict access to your Website in the event of any breach or alleged or suspected breach of the Code of Conduct in relation your Website or if otherwise authorised to do so by a law enforcement agency.
- 16.2 You undertake that any material contained in or linked to your Website and (if applicable) consumed in any discussion group, forum, chat room or bulletin board on your Website (“Material”) is and shall remain (i) legal, decent, honest and truthful; and (ii) compliant with the Data Protection Act 1998 and all other applicable laws and regulations from time to time.
- 16.3 You shall: (i) ensure at all times the accuracy, lawfulness, currency and legislative and regulatory compliance of the Material and the Website; and (ii) be solely liable for any faults or misleading, inaccurate, infringing, defamatory or otherwise unlawful or actionable material contained or referred to in the Website.
- 16.4 You are solely responsible for maintaining the confidentiality and security of your Internet accounts and usage, including use of your unique log-on ID.
- 16.5 You acknowledge and agree that we may be required by a law enforcement agency or for any other legal or regulatory purposes: (i) to monitor the Content and traffic on your Website; and (ii) where necessary to support or defend any dispute, action, cause or other matter that arises, to give evidence of your use of your Website or allow use of your unique log-on ID.

## **17 TERM**

- 17.1 The Hosting Service shall commence on the Start Date and continue for the Initial Period unless terminated sooner in accordance with the Agreements. After the Initial Period the Agreement shall continue unless and until terminated by either of us giving Due Notice in writing to the other. Due Notice to terminate the Agreement can not be served until the Initial Period has elapsed.

## **18 SERVICE LEVELS**

- 18.1 We do not warrant that access to the Website will be uninterrupted or error free but we shall use reasonable endeavours to keep downtime to a minimum. We shall make all commercially reasonable efforts to provide you with email notification of all scheduled and emergency outages.
- 18.2 Where we subcontract the provision of the Hosting Service under Condition 38.1, we will not have control of the Server and accordingly shall not be liable for any loss (including, without limitation any indirect consequential or special loss, damage, costs or expenses or other liability incurred as a result (directly or indirectly) of (i) Server downtime; (ii) inability to access the Website; (iii) loss of or damage to any files, data or the Website; and (iv) any non-receipt, misrouting or failure of email or message transfer, except to the extent that: (i)the subcontractor accepts such liability under the relevant subcontract with us; and (ii)we are actually indemnified for such liability.

## **19 WEBSITE CONTENT AND DATA**

- 19.1 For the avoidance of doubt, we do not monitor and will not have any liability for the content of any communication transmitted by virtue of the Hosting
- 19.2 Due to the public nature of the Internet, we shall not be liable for the protection of the privacy of electronic mail or any other information transferred through the Internet or via any network provider and no guarantee or representation is given that the Hosting Service will be free from hackers or unauthorised users. You shall be liable for the content of any emails transmitted by virtue of the Hosting Service and for ensuring that they comply at all times with all relevant legislation (including, but not limited to the Data Protection Act 1998 and all other privacy laws, regulations and guidance notes made or issued there under).
- 19.3 You grant us a non-exclusive, royalty free licence for the term of the Agreement to use, store and maintain the Content contained in your Website on the Server for the purposes of providing the Hosting Service. We may make such copies as may be necessary to perform our obligations including back-up copies of the Content.

## **20 ALTERATIONS TO THE WEBSITE**

- 20.1 Unless otherwise agreed in writing with you, we shall not be responsible for altering, modifying or updating the Website or its Content or any liability that may arise as result of any such alterations, modifications or updating.

## **SECTION E: HARDWARE SUPPLY**

### **21 BASIS FOR THIS SECTION**

- 21.1 This section E shall apply where you have asked us to supply and/or install the Equipment.

### **22 PRODUCTS AND SERVICES TO BE PROVIDED**

- 22.1 We agree to: (i) sell the Equipment to you free from encumbrances; and (ii) where agreed in writing with us, install the Equipment at the agreed premises on the agreed installation date.
- 22.2 We reserve the right, prior so delivery of the Equipment, to substitute an alternative item of equipment for any item of equipment that we have agreed to supply so you provided that the functionality of the alternative equipment will not materially differ in performance to the substituted equipment and will not result in any increase in the Charges.
- 22.3 Operating supplies such as tapes, disks, stationary, printing ribbons and similar accessories are not supplied as part of the Equipment.

### **23 DELIVERY AND INSTALLATION**

- 23.1 We shall submit the Equipment to our standard works tests before delivery to you.
- 23.2 The Charges do not include the coat of transportation of the Equipment to your premises. You shall pay for the cost of such delivery in addition to the Charges.
- 23.3 You shall, at your own expense, prepare your premises to provide proper environmental and operational conditions for the installation and operation of the Equipment prior to delivery and installation.

- 23.4 We shall install the Equipment as the premises on the installation date. If in our reasonable opinion, it is necessary to remove or otherwise disconnect any of your existing equipment at the premises in order to carry out the installation of the Equipment, then you shall permit and obtain all necessary consents for such removal and/or disconnection and shall give us all necessary assistance to enable such work to be carried out.
- 23.5 We shall upon installation submit the Equipment so our standard installation tests to ensure that the Equipment and even part thereof is in full working order. We shall supply to you copies of the results of such tests. The Equipment shall be deemed to have been accepted once our installation tests have been passed.

## **24 TITLE AND RISK**

- 24.1 The title to the Equipment shall pass to you on payment in full of the Charges and any other sums which may then be due under this Agreement.
- 24.2 Risk in the Equipment shall pass to you on delivery of the Equipment to your premises. If any part of the Equipment shall thereafter be lost, destroyed, damaged, we shall promptly replace the same subject to you paying the cost of such replacement. Accordingly you shall be responsible for insuring the Equipment against all normal risks with effect from the time risk in the Equipment passes to you under this Condition 24.2.

## **25 TELECOMMUNICATIONS**

- 25.1 In this Condition 25, the expression 'Relevant Equipment' means any part of the Equipment which is intended to be connected to any telecommunications system which is or is to be connected to a public telecommunications system.
- 25.2 If you connect the Relevant Equipment to any telecommunications system, you shall be responsible for obtaining the consent of the owner of that system (if necessary) to such connection and for complying with all conditions relating thereto.
- 25.3 You undertake that you will not make any modification to the Relevant Equipment without our prior written consent.
- 25.4 Where we give any data transmission speeds in relation to the Equipment, such speeds are at all times subject to any conditions attached to the use of the relevant modem or telecommunications equipment at the speeds indicated and to the capability of such modem or other telecommunications equipment to achieve such speeds.
- 25.5 We do not give any warranty that the Equipment is fit for any particular purpose unless that purpose is specifically advised to us in writing and we confirm in writing that the Equipment can fill that particular purpose.

25.6 Any warranty confirmed in writing by us under Condition 25.5 or 26.1 is contingent upon your proper use of the Equipment and does not cover any part of the Equipment which has been modified without our prior written consent or which has been subjected to unusual physical or electrical stress or on which the original identification marks have been removed or altered. Nor will the warranty apply if repair or parts replacement is required as a result of causes other than ordinary use, including without limitation, accident, hazard, humidity control or other environmental conditions.

## **26 PERFORMANCE CRITERIA**

26.1 We do not warrant that the Equipment will achieve any particular performance criteria unless: (i) we have specifically guaranteed such criteria in writing subject to specified tolerances; and (ii) the environmental conditions we specify are maintained.

## **SECTION F: PROVISIONS APPLYING TO ALL SECTIONS OF THE AGREEMENT**

### **27 CHARGES AND PAYMENT**

- 27.1 In consideration of the performance of our duties under the Agreement you shall pay to us the Charges.
- 27.2 We may invoice you at periodic intervals, as we consider appropriate before final completion of the Services. An interim invoice represents our final charge of for work up to the date of the invoice, unless we tell you otherwise at the time.
- 27.3 We shall be entitled, at our absolute discretion but not without valid reason (including, without limitation, to reflect changing arrangements with any subcontractor or third party supplier or changing legal, regulatory or business requirements), to increase the Charges for the Hosting Service by giving 8 weeks' written notice to you.
- 27.4 The Charges are inclusive of all labour but exclude: (i) value added tax which if payable shall be charged to you; and (ii) agreed expenses as detailed in the customer order form.
- 27.5 All payments to us by you shall be made with 15 days after the date of our invoice unless otherwise agreed by us in writing. All payments made by you shall be in pounds sterling and shall be made by cheque or bank transfer to such bank account as is nominated by us in writing. Time for payment shall be of the essence.
- 27.6 Any Dispute, Discrepancy or Error relating to the Charges must be reported to us in writing within 7 days of the date of the invoice.
- 27.7 The Charges shall be exclusive of all travel, accommodation and subsistence expenses incurred by our personnel in providing the Services and/or the Equipment, which shall be invoiced separately.

27.8 If the Charges or any other money owing to us is not paid by you by the due date we reserve the right to: (i) Suspend our performance of the Services and/or supply of the Equipment or suspend your access to your Website and/or Software until the Charges (and any interest payable thereon) is paid; and/or (ii) charge you interest on the overdue amount(s) at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

## **28 DOMAIN NAMES**

28.1 Where you contract for us to arrange for a domain name registration, we shall endeavour to procure the registration as you request in writing. However, we shall not be liable in the event that the relevant domain name regulatory authority refuses to register the domain name, or suspends or revokes any registration. We shall not act as your agent or on your behalf in any dealings with regulatory authorities.

28.2 The registration of a domain name and its ongoing use is subject to the relevant naming authority's terms and conditions of use which you should obtain and consider. You are responsible for ensuring that you are aware of these terms so that you can comply with them. It is your responsibility to ensure that your domain name registration is renewed on its renewal date in accordance with such terms.

28.3 We shall have the absolute discretion to require you to select a replacement name and may suspend our performance of the Services if, in our opinion, there are reasonable grounds for us to believe that your current choice of name is, may, or is likely to be in breach of the provisions of the Agreement or any legal or regulatory requirement.

28.4 You confirm and warrant that (i) you are the legal owner of any name supplied by you for use as a domain name in connection with the Website (or have the authority of the legal owner to use such name); (ii) that such or of name does not infringe the rights of any third party; and (iii) that you are the owner of any trademark in any such name (or have the authority of the owner of any trademark to use such name).

## **29 IP ADDRESSES**

29.1 You acknowledge that you have no right, title or interest in the internet protocol address ("IP address") allocated to you, and that any IP address allocated to you is allocated as part of the Services and is not portable or otherwise transferable by you in any manner whatsoever.

29.2 If an IP address is re-numbered or re-allocated by us, we shall use our reasonable endeavours to avoid any disruption to you.

29.3 You agree that you shall have no right, title or interest in the IP address upon termination of the Agreement, and that the acquisition by you of a new IP address following termination of the Agreement shall be solely your responsibility.

## **30 INTELLECTUAL PROPERTY RIGHTS**

30.1 All IPR in the programming, tools, skills, coding and techniques we acquire in developing the Software and/or Website or any part thereof or otherwise in performing the Services are owned by and shall belong to us and we shall be free to use and adapt any or all of the same in or for the purposes of any other project(s).

- 30.2 All IPR in: (i) the design of and data incorporated in the Website; and (ii) any Content we develop or supply and any bespoke Software we create under or as a result of the Agreement or otherwise in the provision of the Services; are owned by and shall belong to us. Subject to Condition 30.4, we grant to you a non-exclusive, royalty free, non-transferable, perpetual license to use the IPR referred to in this Condition 30.2 (but not the IPR referred to in Condition 30.1) in connection with the Website.
- 30.3 You may not decompile, disassemble or reverse engineer the Website or any Software except to the extent permitted by law or with our prior written consent.
- 30.4 Without prejudice to any other rights available to us, we may terminate the licence granted under Condition 30.2 if you fail to pay any sum due to us on its due date for payment.
- 30.5 You hereby authorise us to publish on the Internet all materials supplied or authorised by you for the inclusion on the Website.
- 30.6 You grant us a non-exclusive, royalty free licence to use for the purposes of this Agreement (i) the IPR in any Content you develop or supply for inclusion on the Website; and (ii) any other IPR owned by you that we require for provision of the Services.

### **31 INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

- 31.1 Each of us (the “indemnifying party”) agrees to indemnify the other (the “innocent party”) against any liability, loss, costs and damage suffered by the innocent party as a result of any third party IPR infringement claim made against the innocent party in respect of (i) the innocent party’s use (pursuant to this Agreement) of any IPR licensed to the innocent party by the indemnifying party under this Agreement or (ii) any breach of any warranty given in Condition 28.4. This indemnity is conditional upon the innocent party seeking to enforce this indemnity:
- 31.1.1 Giving written notice to the indemnifying party as soon as reasonably possible after it has received written notice of the threat or existence of any such threat
- 31.1.2 making no statement or admission of liability in respect of the claim and giving the indemnifying party sole authority to defend or settle the claim at the indemnifying party’s cost and expense;
- 31.1.3 giving all reasonable assistance requested by the indemnifying party in connection with defending or settling the claim (at the indemnifying party’s cost and expense); and not having caused or contributed to the cause of the claim by using the indemnifying party’s IPR other than in accordance with the terms of the Agreement.
- 31.2 The indemnity in Condition 31.1 shall not apply where the third party IPR infringement claim results from: (i) any alteration or modification to the Website, the Content or the Software (“the Package”) or any part of the Package made by you or on your behalf by a third party or us at your request; or (ii) your use of the Package or any part of it in combination with hardware or software not supplied or approved by us or for any purpose not envisaged in the Specification.

## **32 SOFTWARE**

- 32.1 Our Software, Third Party Software and any New Software to be used in conjunction with the Website shall be licensed to you on our standard software licence terms or the standard software licence terms of the owner of the IPR in the Third Party Software, (as the case may be).

## **33 WARRANTY**

- 33.1 We warrant and represent to you:

33.1.1 That the Services shall be provided with reasonable care and skill, in accordance with usual industry procedure and in a timely, workmanlike and effective manner;

33.1.2 The Software shall conform substantially to the Specification after successful completion of any agreed acceptance tests; and,

33.1.3 Where supplied and/or installed by us, the Software be free from defects in material workmanship for a period of 90 (ninety) days after the installation date or delivery date (as the case may be). This warranty is contingent upon your proper use of the Software and does not cover any part of the Software which has been modified without our prior written consent or which has been subjected to unusual physical or electrical stress. Nor shall the warranty apply if repair or parts replacement is required as a result of causes other than ordinary use, including without limitation, accident, hazard, humidity control or other environmental conditions.

33.1.4 Where supplied and/or installed by us, the Equipment be free from defects in material workmanship for a period of 90 (ninety) days after the installation date or delivery date (as the case may be). This warranty is contingent upon your proper use of the Equipment and does not cover any part of the Equipment which has been modified without our prior written consent or which has been subjected to unusual physical or electrical stress or on which the original identification marks have been removed or altered. Nor shall the warranty apply if repair or parts replacement is required as a result of causes other than ordinary use, including without limitation, accident, hazard, humidity control or other environmental conditions.

33.2 Our sole obligation in respect of a breach of warranty contained in Condition 33.1 shall be to investigate and, at our option, remedy the defect by repeating the Services or refunding an appropriate part of the Charges, or repairing or replacing the Equipment (or relevant part thereof). Title to any replaced Equipment or any defective part thereof shall revert back to us upon the replacement of the Equipment or defective part.

33.3 We shall have no liability or obligation under the warranty in Condition 33.1 unless we have received written notice of the default, defect or error in the provision of the Services and/or the Equipment in question no later than the expiry of 90 (ninety) days after the date on which the default, defect or error came to your attention, or should have come to your attention. Any such notice must detail an example of the default, defect or error in question and how provision of the Services and/or the Equipment in question should have occurred.

33.4 Except as expressly set out in these Conditions, all representations, warranties, terms and conditions, whether oral or written, express or implied by law, custom, statute or otherwise, and including but not limited, to satisfactory quality or fitness for any particular purpose, are excluded so the fullest extent permitted by law.

#### **34 LIABILITY**

- 34.1 We shall not be liable for any defects in the Website or Equipment or any component parts which arise as a result of (1) use of the Website in conjunction with software or systems not expressly notified to you by us in writing or for any purpose not envisaged so the Specification (2) defects, faults or individual workings of your systems; (3) misuse, alteration, maintenance or interference by you or any third party (including virus and hacker attacks); (4) environmental conditions; or (5) power failure, power fault or electrical interference.
- 34.2 Notwithstanding any other provision of the Agreement, our liability to you for death or personal injury resulting from our negligence or for fraudulent misrepresentation shall not be excluded or in any way limited.
- 34.3 Our maximum aggregated liability under or in connection with the Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed the higher of (a) the Charges payable so us under the Agreement or (b) the proceeds received by us under our professional indemnity insurance policy in respect of the liability in question.
- 34.4 Unless otherwise provided in the Agreement, we shall not be liable to you for any increased costs or expenses, loss of profit, business, contracts, revenues or anticipated savings or loss of software, application programs or computer held data or any indirect, consequential or special loss of any kind, howsoever arising and whether caused by our negligence or otherwise, which may be suffered by you and arise out of or in connection with the supply of the Services and/or Equipment or their use.

#### **35 CONFIDENTIALY**

35.1 Each of us shall treat as confidential all information obtained from the other under or in connection with the Agreement.

#### **36 TERMINATION**

36.1 Unless terminated in accordance with your right under clause 36.3 or as otherwise provided in the Agreement, you may not terminate the Agreement as any time except with our prior written consent and, only then, if you indemnify us in full against all loss (including, without limitation, loss of profit), costs, damages, charges and expenses we reasonable incur as a result of such early termination.

36.2 If: (i) you have asked us to provide you with the Website Service (ii) we have agreed to do so subject to the terms and conditions of the agreement; and (iii) you cancel the Agreement for any reason at any time prior to our completion of the design, development and installation of your new Website in accordance with the Specification, you shall be liable to pay us a percentage of the Charges payable for the Website Service to compensate us for the loss, costs and expenses incurred by us in connection with our supply of the Website Service to you up to the date you cancel the Agreement. The following percentages shall be payable unless the total losses, costs and expenses that we have incurred are less, in which case we shall only be able to recover the lesser amount.

Time at which the agreement is cancelled:	Percentage of Charges payable
At any time prior to the first visit of our designer.	30%
At any time after the first visit of our designer but before our completion of the design, development and installation of your new Website	80%

All cancellation fees payable under this clause 36.2 will be deducted from any deposit by you in respect of the Agreement. If your deposit: (i) is greater than the applicable cancellation fee we will refund the balance to you; or (ii) is less than the applicable cancellation fee you will be required to pay the outstanding amount over and above your deposit within 14 days of the date you cancel the Agreement. Where you fail to pay the outstanding amount within the 14 day period, we shall (without prejudice to any other rights or remedies available to us) be entitled to charge you interest on the amount outstanding in accordance with Condition 27.8

36.3 Either of us may immediately terminate the Agreement by notice to the other if the other:

36.3.1 Is in breach of a material obligation under the Agreement and, if the breach is capable of remedy, fails to remedy the breach within, 30 (thirty) days starting on the day after receipt of notice giving details of the breach and requiring the breach to be remedied; or

36.3.2 commits any act of bankruptcy or compounds with its creditors, or a petition or a receiving order in bankruptcy is presented or made against it, or a petition for an administration order is presented in relation to it, or a resolution or petition to wind up is presented otherwise than for a solvent re-construction or amalgamation, or a receiver, administrative receiver or administrator is appointed.

36.4 Immediately on termination of the Agreement for any reason you shall pay us for work undertaken on your behalf prior to termination at our standard hourly or daily rate, together with any indemnity due under Condition 36.1 in the event of early termination.

36.5 All obligations contained in the Agreement that we expressed or may be implied to continue beyond the expiry of the Agreement shall continue to bind the parties notwithstanding termination.

## **37 ASSIGNMENT**

- 37.1 You shall not assign, transfer or so any other manner make over to any third party the benefit and/or burden of the Agreement without our prior written consent, which shall not be unreasonably withheld.

## **38 SUBCONTRACT**

- 38.1 We may in whole or in part assign, transfer, delegate, subcontract or in any other manner make over to any third party any of our rights or obligations under the Agreement at any time.
- 38.2 If at any time we subcontract any of our obligations under the Agreement, we shall not be liable for any act or omission of the subcontractor, except to the extent that: (i) the subcontractor accepts liability for such act or omission under the relevant subcontract with us; and (ii), we are actually indemnified for such liability.

## **39 FORCE MAJEURE**

- 39.1 Neither of us shall be deemed to be in breach of the Agreement or otherwise liable to the other for any delay in performance or any non-performance of any obligations under the Agreement if and to the extent that the delay or non performance is due to an event or circumstance beyond the reasonable control of that party.

## **40 GENERAL**

- 40.1 No failure, delay or partial exercise on the part of either of us so exercising any right, power or privilege under the Agreement shall operate as a waiver of it, nor shall it preclude any other or further exercise of it.
- 40.2 Except as otherwise expressly agreed in writing you shall have no rights of set off, abatement or withholding (statutory or otherwise).
- 40.3 If any provision of the Agreement is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from the Agreement and shall be deemed deleted from the Agreement and the validity of the remaining provisions shall not be affected.
- 40.4 Any notice shall be delivered personally or prepaid first class post (air mail if posted to or from a place outside the United Kingdom) or by fax or email (if a confirmation or delivery report is received) to the address, fax number or email address provided for such purposes.
- 40.5 The Agreement embodies and sets forth our entire agreement and understanding and supersedes all prior oral or written agreements, representations, understandings or arrangements relating to the subject matter of the Agreement. Neither of us shall be entitled to rely on any agreement, representation, understanding or arrangement not expressly set forth in the Agreement save for any representation made fraudulently.
- 40.6 The Agreement shall be governed by and construed in accordance with the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.

- 40.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement and no person other than the parties to the Agreement shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it.
- 40.8 We perform all of our obligations under the Agreement as an independent contractor and nothing in the Agreement shall create or be deemed to create a partnership, joint venture or the relationship of principal and agent or employer and employee.
- 40.9 No variation of the Agreement shall be valid unless it is in writing and signed by or on behalf of each party.
- 40.10 We neither assume nor accept any liability for any loss, damage, theft, misuse, malfunction, etc. of your hardware or data or anything else that you may own regardless of the cause or reason for any such misfortune.
- 40.11 We, Our officers, and employees will not be liable for lost profits, loss of business or other consequential, special, indirect or punitive damages, even if advised of the possibility of such damages, or for any claim by any third party .
- 40.12 These policies, terms, and conditions may be subject to change without notice.

#### **41 SOFTWARE WARRANTY**

- 41.1 In the case of Software produced by us, we are warranted to conform substantially to its functional specifications for a period of ninety (90) days from the date of installation. We will during the said period, at its own expense, correct any such non-conforming Software provided that the Customer has notified us and upon inspection we have found the Software to be non-conforming. The Customer's sole and exclusive remedy under this warranty will be limited to such correction.

#### **42 CONDITIONS**

- 42.1 This warranty is subject to the following conditions:
- 42.1.1 Any modification of the Software by any persons not authorised by us shall void this warranty.
- 42.1.2 Damage resulting from or aggravated by negligence or misuse is excluded.
- 42.1.3 This warranty is subject to the Customer following the procedures (if any) specified by us from time to time for fault recording.
- 42.1.4 You report any faults in the Software within seven (7) days of the fault becoming apparent and co-operating with us in carrying out such diagnostic and test routines as we may require in accordance with our instructions.
- 42.1.5 You returning to us, if so required by us, at its own expense the Software suitably packed.