

The Marketing Pod Limited

Terms and Conditions

1 Definitions and Interpretation

1.1 Definitions:

"Agency" means THE MARKETING POD LIMITED trading as The Marketing Pod registered in England and Wales with company number 08379199.

"Agency Personnel" means all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time.

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

"Business Hours" means the period from 9.00 am to 5.00 pm on any Business Day.

"Charges" means the charges payable by the Client for the supply of the Services in accordance with clause 8, together with any disbursements and out-of-pocket expenses (Charges and payment).

"Client" means the person or firm who purchases Services from the Agency.

"Client Data" means any data (including any Personal Data relating to the staff, customers or suppliers of the Client), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to the Agency by or on behalf of the Client.

"Client Default" has the meaning set out in clause 4.2.

"Conditions" means these terms and conditions as amended from time to time in accordance with clause 17.5.

"Confidential Information" means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to, the Contract.

"Contract" means the agreement between the Agency and the Client for the supply and purchase of Services incorporating these Conditions and the Order and including all their respective schedules, attachments, annexures and statements of work.

"Control" has the meaning given in section 1124 of the Corporation Tax Act 2010 OR means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power

to direct or cause the direction of the management of the company and Controls, Controlled and under common Control shall be construed accordingly

"Data Protection Legislation" means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

"Deliverables" means the output of the Services produced by the Agency for the Client as specified in the Quotation or a Services Annex and any other documents, products or materials provided by the Agency to the Client arising from the provision of the Services.

"Documentation" means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Services.

"Effective Date" means the date the Contract will come into effect as defined in clause 2.3.

"Force Majeure" means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract (including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay);

"Intellectual Property Rights" means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing.

"IPR Claim" means any claim by a third party against the Client that the provision of the Services infringes the Intellectual Property Rights of that third party.

"Mandatory Policies" means the Agency's business policies notified to the Client from time to time.

"Modern Slavery Policy" means the Supplier's anti-slavery and human trafficking policy in force and notified to the Customer from time to time.

"Personal Data" means any information relating to an identified or identifiable living individual that is processed by the Agency on behalf of the Client as a result of, or in connection with, the provision of the Services; an identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

"Quotation" means the Agency's quotation, which contains, amongst other things, the Services to be provided, the Specification, the Term and details relating to the Charges (so far as they are known on the date the Quotation is issued).

"Services" means the services, including the Deliverables, supplied by the Agency to the Client as set out in the Specification and in accordance with the Contract.

"Services Annex" means an annex to these Conditions which sets out the additional definitions and terms and conditions related to a specific Service.

"Purchases Annex" means an annex to these Conditions which sets out the additional definitions and terms and conditions related to purchases made by behalf of a Client.

"Services Start Date" means the day on which the Agency is to start provision of the Services as set out in the Quotation or as otherwise agreed in writing between the parties. If no specific day is set out in the Quotation or has otherwise been agreed in writing between the parties, the Services Start Date shall be the Effective Date.

"Specification" means the description or specification of the Services provided in the Quotation or contained within a Services Annex (where applicable to the Services provided).

"Term" means the period during which the Services will be supplied by the Agency to the Client as set out in the Quotation or as otherwise agreed in writing between the parties.

"Third Party Suppliers" means licensors, suppliers, agents, subcontractors, contractors or freelancers used by the Agency to provide some or all of the Services.

"VAT" means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.

"Virus" means any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose.

"Vulnerability" means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

1.2 these Conditions, unless the context requires otherwise:

- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.11 a reference to legislation is a reference to that legislation as in force at the date of the Contract;
- 1.2.11 a reference to legislation includes all subordinate legislation made as at the date of the Contract under that legislation; and
- 1.2.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction

2 Basis of contract

- 2.1 Following initial fact finding and scoping discussions, the Agency will send its Quotation to the Client for approval.
- 2.2 Unless otherwise stated in writing in the Quotation, any Quotation given by the Agency is only valid for a period of 20 Business Days from its date of issue.
- 2.3 The Quotation will be deemed accepted when the Client has signed and returned the Quotation to the Agency at which point the Contract shall come into existence (Effective Date).

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 No variation of these Conditions or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Agency and the Client respectively.

3 Supply of Services

3.1 The Agency shall supply the Services to the Client in accordance with the Contract in all material respects.

3.2 The Agency shall supply the Services to the Client from the Services Start Date and shall continue, unless cancelled in accordance with clause 13 or terminated earlier in accordance with clause 14, for the Term and thereafter until one party gives not less than 30 days' written notice to the other to terminate the Contract.

3.3 The Client consents to the Agency using Third Party Suppliers at the Agency's reasonable discretion. The Agency shall not be liable to the Client for the acts or omissions of a Third-Party Supplier, but it shall use reasonable endeavours to mitigate the effect any act or omission of the Third-Party Supplier. If the Client wishes to object to the use by the Agency of any Third-Party Supplier, the Client must inform the Agency of its objection and the reasons for it before the Effective Date to enable the Agency to consider that objection. The Client will have no right to object to the use by the Agency of any Third-Party Supplier after the Effective Date.

3.4 The Agency shall use all reasonable endeavours to meet any performance dates specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

3.5 The Agency shall appoint a manager in respect of the Services whose identity will be referred to in the Quotation or otherwise confirmed in writing. That person shall have authority to contractually bind the Agency on all matters relating to the relevant Services. The Agency may replace that person from time to time where that person ceases its employment or engagement with the Agency or where reasonably necessary in the interests of the Agency's business.

3.6 The Agency reserves the right to amend the Specification if necessary to comply with any applicable law, technical or operational issue or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Agency shall notify the Client in any such event.

3.7 The Agency warrants to the Client that the Services shall:

3.7.1 be performed with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, s 13; and

3.7.2 conform in all material respects to the Quotation.

4 Client Obligations

4.1 The Client shall, in a timely manner:

4.1.1 co-operate with the Agency in all matters relating to the Services;

4.1.2 nominate a person who shall have the authority to bind the Client on all matters relating to the Services;

4.1.3 provide the Agency with such information and materials as the Agency may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

4.1.4 provide the Agency with all necessary passwords and access codes to enable the Agency to provide the Services;

4.1.5 grant the Agency permission to add, remove or change users on their various accounts as shall be required to enable the Agency to provide the Services;

4.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

4.1.7 make regular secure back-up copies of the Client Data; and

4.1.8 comply with any additional obligations as set out in the Specification and in the relevant Services Annex.

4.2 If the Agency's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (Client Default):

4.2.1 without limiting or affecting any other right or remedy available to it, the Agency shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Agency's performance of any of its obligations;

4.2.2 the Agency shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Agency's failure or delay in performing any of its obligations as set out in this clause 4.2; and

4.2.3 the Client shall reimburse the Agency on written demand for any costs or losses sustained or incurred by the Agency arising directly or indirectly from the Client Default.

4.3 The Agency shall not be liable for any delay in performing, or failure to perform, the Services directly or indirectly caused or contributed to by:

4.3.1 the Client's failure to provide the Agency with adequate instructions for performance of the Services;

- 4.3.2 the Client's failure to comply with any of its obligations under the Contract;
- 4.3.3 the Client's negligence or other unlawful act or omission; or
- 4.3.4 Force Majeure.
- 4.4 In performing its obligations under this Contract, the Client shall:
 - 4.4.1 comply with all applicable laws, statutes and regulations from time to time in force; and
 - 4.4.2 comply with the Mandatory Policies.

5 Services Annex

Certain of the Services provided by the Agency have additional definitions, terms and conditions that apply to those Services. These additional definitions, terms and conditions are contained within the Services Annex for that or those Services and shall form part of the Contract. In the event of a conflict between these Conditions and the definitions, terms and conditions contained within the relevant Services Annex, the terms and conditions contained within the relevant Services Annex shall take precedence.

6 Non-solicitation of employees and contractors

6.1 The Client shall not, without the prior written consent of the Agency, solicit or entice away from the Agency or employ or attempt to employ any Agency Personnel or person who is, or has been, engaged as an employee, consultant or subcontractor of the Agency in the provision of Services to the Client or the management of the Contract (Restricted Person).

6.2 The Client shall be bound by the covenant set out in clause 6.1 during the term of the Contract and for a period of 12 months after termination or expiry of the Contract.

6.3 Any consent given by the Agency in accordance with 6.1 shall be subject to the Client paying to the Agency a sum equal to one year's basic salary or the annual fee that was payable by the Agency to that Restricted Person plus the recruitment costs incurred by the Agency in replacing such person. The Client confirms that these liquidated damages are reasonable and proportionate to protect the legitimate interests of the Agency.

7 Changes

7.1 Either party may propose changes to the Specification by giving written notice to the other party. No proposed changes shall take effect until they have been agreed by both parties in writing in accordance with clause 27.

7.2 If the other party agrees to the proposed changes to the Specification, they shall confirm this in writing whereupon the Specification shall be updated to reflect the agreed changes. If a proposed change is not agreed, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure set out in clause 16.

8 Charges and payment

- 8.1 In consideration of the provision of the Services and the delivery of the Deliverables by the Agency, the Client shall pay the Charges.
- 8.2 Before the Agency provides any Services, the Client may be required to pay a deposit to the Agency, details of which will be set out in the Quotation (Deposit).
- 8.3 Where the Charges are calculated on a time and materials basis, the Agency's charges shall be calculated based on a 7.5-hour day worked during Business Hours unless the Quotation provides for an alternative basis.
- 8.4 The Agency shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Agency engages or Agency Personnel in connection with the Services including travelling expenses, hotel costs subsistence and any associated expenses.
- 8.5 The Agency shall also be entitled to charge the Client for the cost of licenses or services provided by third parties and required by the Agency for the performance of the Services (e.g. software and copyright licences), and for the cost of any materials.
- 8.6 The Agency reserves the right to increase the Charges from time to time. The Agency will give the Client at least 30 days' notice of any increase in the Charges.
- 8.7 Notwithstanding clause 8.6, the Agency may increase the Prices with immediate effect by written notice to the Client where there is an increase in the direct cost to the Agency of supplying the relevant Services which exceed 2.5% and which is due to any factor beyond the control of the Agency.
- 8.8 The Agency shall invoice the Client for the Charges at the intervals specified in the Quotation or the relevant Services Annex. If no intervals are specified, the Agency shall invoice the Client at the end of each month for the Services performed and expenses incurred during that month.
- 8.9 With the exception of any invoice raised in respect of a Deposit or where an advance payment is required to pay for goods or services provided by a Third-Party Supplier (where payment shall be due before the Services are provided or before the costs of the Third-Party Supplier are incurred), the Client shall pay each invoice submitted by the Agency:
- 8.9.1 within 30 days of the date of the invoice (or such other period as contained in the Quotation or relevant Services Annex); and
- 8.9.2 in full without deduction or set off and in cleared funds to a bank account nominated in writing by the Agency,
- 8.10 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- 8.10.1 The Agency may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of Barclays Bank PLC from time to time in force; and

8.10.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

8.11 All amounts payable by the Client under the Contract are exclusive of VAT. Where any taxable supply for VAT purposes is made under the Contract by the Agency to the Client, the Client shall, on receipt of a valid VAT invoice from the Agency, pay to the Agency such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

8.12 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9 Intellectual property rights

9.1 All Intellectual Property Rights in or arising out of or in connection with the Services and in the Deliverables (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Agency.

9.2 The Agency grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Deliverables in its business.

9.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 9.2.

9.4 The Client grants the Agency a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to the Agency for the term of the Contract for the purpose of providing the Services to the Client.

9.5 The Client acknowledges that the Agency may use open-source software as part of the Deliverables.

9.6 The Client's use of open-source software shall be governed by the terms of the applicable open-source licence. The Client warrants and undertakes that it will comply with the terms of the applicable open-source licence in all material respects. The Client further warrants and represents that that any open-source software it uses shall be uninterrupted, error-free and free from any Vulnerabilities or Virus.

9.7 The Client acknowledges that certain of the Agency's Services and Deliverables are dependent upon Third Party Supplier's licences. The Agency will not be liable to the Client for any breach of this Contract if the Services cannot be supplied or if any Deliverable cannot be provided or used as a direct or indirect result of the Third Party Supplier suspending or revoking any licence.

10 Data Protection

Both parties will comply with all applicable requirements of the Data Protection Legislation and may exercise its respective rights and remedies, under the schedule.

11 Indemnity

11.1 The Client shall indemnify the Agency against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential loss, loss of profit, loss of reputation and all interest penalties and legal costs (calculated on the indemnity basis) and all other professional costs and expenses) suffered or incurred by the Agency arising out of or in connection with:

11.1.1 any breach of any warranty given by the Client in these Conditions or any Services Annex;

11.1.2 the Client's breach or negligent performance or non-performance of the Contract;

11.1.3 the enforcement of the Contract;

11.1.4 any claim made against the Agency for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Services or any Deliverable; and

11.1.5 any claim made against the Agency by a third party arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Client, its employees, agents or subcontractors.

11.2 This indemnity shall apply whether or not the Agency has been negligent or at fault.

11.3 The Client's liability under this indemnity is unlimited. The Client shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under these Conditions. On request, the Client shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Client shall on request assign to the Agency the benefit of such insurance.

12 Limitation of liability

12.1 References to liability in this clause 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Nothing in this clause 12 shall limit the Client's payment obligations under the Contract.

12.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

12.3.1 death or personal injury caused by negligence;

12.3.2 fraud or fraudulent misrepresentation; or

12.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.4 Subject to clause 12.2 (No limitation of Client's payment obligations) and clause 12.3 (Liabilities which cannot legally be limited) the Agency's total liability to the Client in respect of all

breaches of this Agreement shall not exceed the total charges paid by the Client to the Agency. Total charges means all sums paid by the Client in respect of the Deliverables and Services supplied by the Agency giving rise to the liability.

12.5 Subject to clause 12.2 (No limitation of Client's payment obligations) and clause 12.3 (Liabilities which cannot legally be limited), this clause 12.4 sets out the types of loss that the Agency wholly excludes:

12.5.1 loss of profits;

12.5.2 loss of revenue;

12.5.3 loss of sales or business;

12.5.4 loss of agreements or contracts;

12.5.5 loss of anticipated savings;

12.5.6 loss of use or corruption of software, data or information;

12.5.7 loss or damage to equipment;

12.5.8 loss of use;

12.5.9 loss of production;

12.5.10 loss of or damage to goodwill;

12.5.11 loss of commercial opportunity;

12.5.12 loss of business; and

12.5.13 indirect or consequential loss.

12.6 The Agency has given commitments as to compliance of the Services with relevant Specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.7 Unless the Client notifies the Agency that it intends to make a claim in respect of an event within the notice period, the Agency shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

12.8 This clause 12 shall survive termination of the Contract.

13 Cancellation

13.1 The Client may cancel this Contract upon giving the Agency written notice as follows:

13.1.1 if the Term is less than 3 months, 30 days;

13.1.2 if the Term is between 3 months and 6 months, 60 days; and

13.1.3 if the Term exceeds 6 months, 90 days.

13.2 In the case Third Party Suppliers, upon cancellation, the Client will remain liable to pay the fees and expenses of all Third Party Suppliers, regardless of whether these had been invoiced as at the date the Contract was cancelled.

13.3 The Agency shall be under no obligation to the Client to mitigate any losses arising from cancellation.

14 Termination

14.1 Without affecting any other right or remedy available to it, the Agency may terminate the Contract for any reason and at any time by giving the Client 30 days' written notice.

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

14.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

14.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

14.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

14.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.3 Without affecting any other right or remedy available to it, the Agency may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.

14.4 Without affecting any other right or remedy available to it, the Agency may terminate the Contract with immediate effect by giving written notice to the Client if the Client:

14.4.1 publishes views which, in the opinion of the Agency, are likely to harass, upset, insult, embarrass, alarm or annoy any person; or

14.4.2 directly or indirectly engages in any obscene, extremist or terrorist activities; or

14.4.3 directly or indirectly associates itself with any person who engages in any obscene, extremist or terrorist activities.

14.5 Without affecting any other right or remedy available to it, the Agency may suspend the supply of Services under the Contract or any other contract between the Client and the Agency if:

14.5.1 the Client fails to pay any amount due under the Contract on the due date for payment;

14.5.2 the Client becomes subject to any of the events listed in clause 14.2.3 to clause 14.2.4, or the Agency reasonably believes that the Client is about to become subject to any of them; and

14.5.3 the Agency reasonably believes that the Client is about to become subject to any of the events listed in clause 14.2.2.

15 Consequences of termination

15.1 On termination or expiry of the Contract:

15.1.1 the Client shall promptly pay to the Agency all of the Agency's outstanding unpaid invoices and interest and, in respect of Services and Deliverables supplied but for which no invoice has been submitted, the Agency shall submit a pro-rated invoice, which shall be payable by the Client on receipt;

15.1.2 the Client shall delete or return any Deliverables which the Agency details and has not been fully paid for. If the Client fails to do so after receiving notice, then the Agency may enter the Client's premises and delete or take possession of them. Until they have been deleted or returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

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

15.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

16 Dispute Resolution

16 If a dispute arises out of or in connection with the Contract (Dispute) then the parties shall follow the procedure set out in this clause 16:

16.1.1 either party shall give to the other written notice of the Dispute setting out its nature and full particulars (Dispute Notice);

16.1.2 upon service of the Dispute Notice the parties shall attempt in good faith to resolve the Dispute;

16.1.3 if the parties are unable to resolve the Dispute within 7 days of the date of service of the Dispute Notice, the parties agree to enter into mediation in good faith to settle the dispute in accordance with the CEDR Model Mediation Procedure.

16.1.4 Either party may issue formal legal proceedings at any time whether or not the steps referred to this clause have been completed.

17 Notices

17.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in in the Quotation.

17.2 Any notice shall be deemed to have been received:

17.2.1 if delivered by hand, at the time the notice is left at the proper address;

17.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

17.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. Business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

17.3 Any notice served by fax shall not be valid.

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

18 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such an event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 60 days, either party may terminate the Contract by written notice to the other party.

19 IPR Claims

19.1 Subject to clauses 19.2 and 19.4, the Agency shall:

19.1.1 defend any IPR Claim at its own expense; and

19.1.2 pay all costs and damages awarded against the Client by a court of competent jurisdiction in final judgment (or agreed in settlement by the Agency) of any IPR Claim.

19.2 Clause 19.119.1 is conditional on the Client:

19.2.1 notifying the Agency in writing of the IPR Claim as soon as reasonably practicable;

19.2.2 giving the Agency the sole authority to conduct and settle all negotiations and litigation arising from the IPR Claim;

19.2.3 not making any admission of liability or agreeing any settlement or compromise of the IPR Claim; and

19.2.4 providing the Agency with all reasonable assistance in relation to the IPR Claim (at the Client's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Client.

19.3 Subject to clause 19.4, if any IPR Claim is made or is reasonably likely to be made, the Agency may at its option:

19.3.1 procure for the Client the right to continue receiving the relevant Services; or

19.3.2 re-perform the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in conformance to the Contract in all material respects.

19.4 Clauses 19.119.1 and 19.3 shall not apply to any IPR Claim directly or indirectly caused or contributed to by:

19.4.1 use of the Services by the Client other than in accordance with the Contract or the Agency's reasonable written instructions;

19.4.2 a breach by the Client of any of its obligations under the Contract; or

19.4.3 the Client's negligence or other unlawful act or omission.

19.5 Subject to clause 12, clause 19 sets out the Client's sole and exclusive remedies (howsoever arising, including in contract, tort, negligence or otherwise) for any IPR Claim or any other actual or alleged infringement of any Intellectual Property Rights.

20 Confidentiality and announcements

20.1 The Client shall keep confidential all Confidential Information of the Agency and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

20.1.1 any information which was in the public domain at the date of the Contract;

20.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

20.1.3 any information which is independently developed by the Client without using information supplied by the Agency; or

20.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

20.2 This clause shall remain in force for a period of five years from the date of the Contract.

20.3 The Client shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

21 Anti-bribery

21.1 For the purposes of this clause 4 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

21.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:

21.2.1 all of that party's personnel;

21.2.2 all others associated with that party; and

21.2.3 all of that party's sub-contractors;

involved in performing the Contract so comply.

21.3 Without limitation to clause 21.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment or advantage, or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.

21.4 The Client shall immediately notify the Agency as soon as it becomes aware of a breach by the Client of any of the requirements in this clause 4.

22 Anti-slavery

22.1 The Agency shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy.

22.2 The Client undertakes, warrants and represents that:

22.2.1 neither the Client nor any of its officers, employees, agents or subcontractors:

22.2.1.1 has committed an offence under the Modern Slavery Act 2015 (an MSA Offence); or

22.2.1.2 has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

22.2.1.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

22.2.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;

22.2.3 it has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 and the Modern Slavery Policy in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Supplier on request at any time throughout the Contract;

22.3 The Client shall notify the Supplier immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Client's obligations under clause 22.2. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Client's obligations.

23 Cumulative remedies

The rights and remedies provided in the Contract for the Agency only are cumulative and not exclusive of any rights and remedies provided by law.

24 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Client's obligations only.

25 Further assurance

The Client shall at the request of the Agency, and at the Agency's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

26 Entire agreement

26.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

26.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

26.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

27 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

28 Assignment

The Client may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Agency's prior written consent, which it may withhold or delay at its absolute discretion.

29 Set off

29.1 The Agency shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Client under the Contract.

29.2 The Client shall pay all sums that it owes to the Agency under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

30 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

31 Equitable relief

The Client recognises that any breach or threatened breach of the Contract may cause the Agency irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Agency, the Client acknowledges and agrees that the Agency is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

32 Severance

32.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

32.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

33 Waiver

33.1 No failure, delay or omission by the Agency in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

33.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Agency shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Agency.

34 Compliance with law

The Client shall comply with all Applicable Laws and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

35 Costs and expenses

The Client shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

36 Third party rights

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

37 Governing law

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

38 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive OR non-exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims)

Schedule 1: List of sub processors

A list of sub processors shall be available upon request at any time during the agreement and provided within 30 working days of the request.

Services Annex: Website Design

1 Interpretation

The definitions in this clause apply in this Services Annex (in addition to the definitions set out in the Conditions).

Unless otherwise specified, a reference to a specific clause relates to a specific clause in this Services Annex.

1.1 Definitions:

Acceptance: the acceptance or deemed acceptance of the Website by the Client pursuant to 4.

Acceptance Tests: the tests to be carried out on the Website in accordance with clause 4.

Content: the content provided to the Agency by the Client from time to time for incorporation into the Website.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

Website: the website designed by the Agency pursuant to this Contract.

Website Software: the software for the Website commissioned by the Client as specified in the Quotation.

Website Specification: the specification for the Website set out in the Quotation.

2 Scope of the project

2.1 The Agency shall design, develop and deliver the Website in accordance with the Website Specification.

2.2 The Agency shall use its reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and shall not be of the essence for the performance of the Services.

2.3 The Agency reserves the right to amend the Website Specification if necessary to comply with any applicable law, technical or operational issue, regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Agency shall notify the Client in such event.

3 Client responsibilities

3.1 The Client shall be responsible for the accuracy and completeness of the Content on the Website.

3.2 The Client shall ensure that the Content does not infringe any applicable laws, regulations or third-party rights (including third party stock images, material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third-party Intellectual Property Rights) (Inappropriate Content).

3.3 The Client shall be liable to pay to the Agency all damages and losses (both direct and indirect) incurred by the Agency arising as a result of any action or claim brought against them concerning the Content and which constitutes Inappropriate Content as alleged or otherwise. This Client further agrees to indemnify the Agency in respect of all professional fees and expenses incurred in dealing with any such action or claim.

3.4 The Agency may include the statement "Built by The Marketing Pod" or "Built with ♥ by The Marketing Pod" or a variation thereof in the footer of each page of the Website.

4 Development and acceptance of Website

4.1 Once the Agency has completed the design and development of the Website it shall run the Acceptance Tests.

4.2 The Acceptance Tests shall test compliance of the Website against the Website Specification.

4.3 If, notwithstanding the passing the Acceptance Tests, the Customer is of the reasonable opinion that the Website fails to comply with the Website Specification, it shall provide the Agency with a written notice to that effect, giving details of such failure. If the Agency accepts that the Website fails to comply with the Website Specification in the manner notified, it shall remedy such failure within a reasonable time and run the Acceptance Tests again.

4.4 If any failure to pass the Acceptance Tests results from a defect which is caused by a direct or indirect act or omission of the Client, the Client shall pay the Agency in full for all such additional services and products at the Agency's then current fees and prices.

4.5 Acceptance of the Website shall be deemed to have occurred on whichever is the earlier of:

- (a) the Client acknowledging its acceptance in writing;
- (b) the expiry of 14 days after the completion of all the Acceptance Tests unless the Client has given any written notice under clause 4.3; or
- (c) the publication of the Website on the internet.

5 Changes to the Website Specification

5.1 Any request to change the Website Specification shall be processed in accordance with this clause 5.

5.2 Where the Client proposes any change to any aspect of the Website Specification, it shall notify the Agency of this in writing, setting out the reasons for the change and providing full details of the changes required.

5.3 Upon receipt of a notice from the Client pursuant to clause 5.2, and provided that the Agency is prepared to change the Website Specification, the Agency shall confirm in writing any impact the change will have on the Charges and the estimated delivery dates for the Website.

5.4 If the Client agrees with the impact on the Website Specification, Charges and other changes advised by the Agency, the parties shall record that variation to this Contract in writing.

6 Warranties

6.1 The Agency warrants that the Website will perform substantially in accordance with the Website Specification upon Acceptance. If the Website does not so perform, the Agency shall, for no additional charge, carry out any work reasonably necessary in order to ensure that the Website substantially complies with the Website Specification.

6.2 The warranty set out in 6.1 shall not apply to the extent that any failure of the Website to perform substantially in accordance with the Website Specification is caused by any Content.

6.3 The Agency does not warrant that the Client's use of the Services or the Website will be uninterrupted or error-free or that the Website will be free from Vulnerabilities or Virus.

Services Annex: Website Hosting and Support

1.1 Definitions (in addition to the definitions set out in the Conditions):

Applicable Data Protection Laws: all data protection or privacy laws and regulations applicable to the processing of Personal Data under the Agreement, including the (i) the Australian Privacy Principles and the Australian Privacy Act (1988), (ii) Brazil's Lei Geral de Proteção de Dados (LGPD), (iii) the California Consumer Privacy Act (CCPA), (iv) Canada's Federal Personal Information Protection and Electronic Documents Act (PIPEDA), (v) the European Union's General Data Protection Regulation (GDPR), (vi) any national data protection laws made under or pursuant to the GDPR (vii) the EU e-Privacy Directive (Directive 2002/58/EC), (viii) Singapore's Personal Data Protection Act 2012 (PDPA), (ix) the Swiss Federal Data Protection Act of 19 June 1992 and its Ordinance, (x) UK GDPR or Data Protection Act 2018; in each case as may be amended, superseded or replaced.

Commercially Reasonable Efforts: the same degree of priority and diligence with which the Agency meets the support needs of its other similar clients.

Client Cause: any of the following causes:

- (a) any improper use, misuse or unauthorised alteration of the Website by the Client;
- (b) the use by the Client of any hardware or software not provided by the Agency or approved by the Agency in the Specification for use by the Client in connection with the Website; or
- (c) the use of a non-current version or release of the Website.

Content: the content provided to the Agency by the Client from time to time for incorporation into the Website.

Excluded Services: services that the Agency will not be supplying to the Client as more particularly described in clause 4.

Fault: any Operational Fault.

Help Desk Support: any support provided by help desk technicians sufficiently qualified and experienced to identify and resolve most support issues relating to the Website.

Higher-level Support: any higher-level support provided by the Agency.

Operational Fault: failure of the Website to operate in all material respects in accordance with the Specification, including any operational failure or error referred to in the Service Level Table.

Out-of-scope Services: either of the following services:

- (a) any services provided by the Agency outside of the Support Hours;
- (b) any services provided by the Agency in connection with any apparent problem regarding the Website reasonably determined by the Agency not to have been caused by a Fault, but rather by a Client Cause or a cause outside the Agency's control (including any investigational work resulting in such a determination); or
- (c) any Higher-level Support provided in the circumstances specified in clause 2.3.

Personal Data: any personal data which the Agency processes in connection with this agreement.

Service Levels: the service level responses and response times referred to in the Service Level Table.

Service Level Table: the table set out in clause 7.1.

Solution: either of the following outcomes:

- (a) correction of an Operational Fault or;
- (b) a workaround in relation to an Operational Fault (including a reversal of any changes to the Website if deemed appropriate by the Agency) that is reasonably acceptable to the Client.

Support Cap: the maximum number of hours per month that the Agency will be prepared to provide Support Services during the Support Period.

Support Fees: the fees or basis for charging fee agreed by the parties in writing.

Support Hours: 9.00 am until 5.00 pm Monday to Friday (excluding bank holidays).

Support Period: the period more particularly described in clause 11.

Support Request: request made by the Client for support in relation to the Website, including correction of an Operational Fault.

Support Services: maintenance of the Website, including the updating of the Website's Content, Help Desk Support and Higher-level Support, engagement of sub-processors, but excluding any Out-of-scope Services and the Excluded Services.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

Website: the website to be supported by the Agency.

1.2 Unless otherwise specified, a reference to a specific clause relates to a specific clause in this Services Annex.

2 Support Services

2.1 During the Support Period the Agency shall host the Website and perform the Support Services during the Support Hours in accordance with the Service Levels.

2.2 As part of the Support Services, the Agency shall:

- (a) host the Website on its own servers, or third-party servers;
- (b) provide Help Desk Support by means of the following telephone number +44 330 128 9075 and e-mail address digital@themarketingpod.co.uk.
- (c) use Commercially Reasonable Efforts to correct all Operational Faults notified under clause 6.3;
- (d) provide technical support for the Website in accordance with the Service Levels;
- (e) deploying security patches where necessary;
- (f) undertaking regular server health checks; and
- (g) monitor uptime and performance.

2.3 Any Higher-level Support requested by the Client to be provided by an individual whose qualification or experience is greater than that reasonably necessary to resolve the relevant Support Request shall be deemed an Out-of-scope Service, provided that an appropriately qualified or experienced individual was available at the time when Higher-level Support was sought.

2.4 The Agency may reasonably determine that any services are Out-of-scope Services.

2.5 The Client acknowledges that the Agency is not obliged to provide Out-of-scope Services.

3 Website Content

3.1 The Agency shall update the Website with Content at the Client's request from time to time, but the time expended on this will not exceed the Support Cap. The Client shall ensure that the Content does not infringe any applicable laws, regulations or third-party rights (such as but not limited to material, which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third-party Intellectual Property Rights) (Inappropriate Content).

3.2 The Client acknowledges that the Agency has no control over any content placed on the Site by visitors and does not purport to monitor the content of the Website. The Agency may remove Content from the Website where it reasonably suspects such content is Inappropriate Content.

3.3 The Client shall indemnify the Agency against all damages, losses and expenses arising as a result of any action or claim that the Content or any other material posted to, or linked to, the Website constitutes Inappropriate Content.

4 Excluded Services

The Agency will not be providing the Client with the following Services (without limitation):

- (a) ongoing monitoring of website content;
- (b) penetration testing;
- (c) cybersecurity; or
- (d) anti-virus protection.

5 Fees

5.1 The provision of Support Services on a remote, off-site basis (such as over the telephone or by e-mail) within the Support Period shall be included in the Support Fees.

5.2 The provision of Support Services outside the Support Period or the provision of Out-of-scope Services shall be charged for at the Agency's applicable time/cost rates.

6 Submitting Support Requests

6.1 The Client may request Support Services during the Support Hours by way of a Support Request.

6.2 Each Support Request shall include a description of the Operational Fault and, where relevant, the start time of the incident.

6.3 The Client shall provide the Agency with:

- (a) prompt notice of any Faults which it becomes aware of; and
- (b) such output and other data, documents, information, assistance and (subject to compliance with all Client's security and encryption requirements notified to the Agency in writing) remote access to the Website, as are reasonably necessary to assist the Agency to reproduce operating conditions similar to those present when the Client detected the relevant Operational Fault and to respond to the relevant Support Request.

6.4 All Support Services shall be provided on an off-site basis (such as over the telephone or by e-mail).

7 Service Levels

7.1 The Agency shall:

- (a) prioritise all Support Requests based on its reasonable assessment of the severity level of the Fault reported; and

(b) use its reasonable endeavours to respond to Support Requests, in accordance with the responses and response times specified in the table set out below:

Severity of fault	Definition	Service Level response and response time for Operational Faults
1	<p>Business critical failures: An error in, or failure of, the Website that:</p> <p>a) materially impacts the operations of the Client's business or marketability of its service or product;</p> <p>b) prevents necessary work from being done; or</p> <p>c) disables major functions of the Website from being performed.</p>	<p>Stage 1 Response:</p> <p>Acknowledgment of receipt of a Support Request within 3 hours.</p> <p>Stage 2 Response:</p> <p>The Agency shall:</p> <p>a) restore the Website from the Client's most recent backup to a state that allows the Client to continue to use all functions of the Website in all material respects within 48 hours after the Stage 1 Response time has elapsed; and</p> <p>b) exercise Commercially Reasonable Efforts until full restoration of function is provided.</p> <p>Stage 3 Response:</p> <p>The Agency shall work on the problem continuously and implement a Solution within 5 Business Days of receipt of the Support Request.</p> <p>If the Agency delivers a Solution by way of a workaround reasonably acceptable to the Client, the severity stage assessment shall reduce to a severity Stage 2 or lower.</p>
2	<p>System Defect with Workaround:</p> <p>a) a business-critical failure in the Website for which a work-around exists; or</p> <p>b) an error or failure in the Website (other than a business-critical failure) that affects the operations of the Client's business or marketability of its service or</p>	<p>Stage 1 Response:</p> <p>Acknowledgment of receipt of a Support Request within 3 hours.</p> <p>Stage 2 Response:</p> <p>The Agency shall, 3 Business Days after the Stage 1 Response time has elapsed, provide:</p>

Severity of fault	Definition	Service Level response and response time for Operational Faults
	product.	<p>a) an emergency software fix or workaround, or; and</p> <p>b) temporary release or update release, which allows the Client to continue to use all functions of the Website in all material respects.</p> <p>Stage 3 Response:</p> <p>The Agency shall provide a permanent Fault correction as soon as practicable and no later than 15 Business Days after the Agency's receipt of the Support Request.</p>
3	<p>Minor Error:</p> <p>An isolated or minor error in the Website that:</p> <p>a) does not significantly affect Website functionality;</p> <p>b) may disable only certain non-essential functions; or</p> <p>c) does not materially impact the Client's business performance.</p>	<p>Stage 1 Response:</p> <p>Acknowledgment of receipt of the Support Request within 1 business day.</p> <p>Stage 2 Response:</p> <p>The Agency shall provide a permanent Fault correction within five Business Days after the Stage 1 Response time has elapsed.</p>

7.2 Time for responding to a Support Request shall not be of the essence. Accordingly, no discount, refund or credit will be given to the Client in the event the Agency fails to provide a solution within the relevant Service Level response time. The Client's sole remedy in the event of the Agency's failure to respond to a Support Request within the relevant Service Level shall be contained in clause 8.

8 Sole remedy

If a Solution is not provided within the relevant Service Level response time, the Client may escalate the Support Request to the Agency's relationship manager.

9 Communications

The parties may communicate in respect of any matter referred to in this by e-mail (unless specified otherwise).

10 Data Protection

10.1 By entering into this agreement, the Client consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Agency in connection with the processing of Personal Data.

10.2 Without prejudice to the generality of clause 10.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to the Agency during the Support Period and for purposes of this Contract.

10.3 The Client acknowledges that when providing the Support Services, the Agency may have to appoint sub-processors to host the Website on a temporary basis for the purposes of carrying out investigations into Operational Faults. A non-definitive list of sub-processors is set out in Schedule 1 of this agreement. Sub-processors may, or may not, be required to handle client data, potentially including personal information in order to deliver services. The Client hereby gives it prior general authorisation for the Agency to:

- (a) appoint sub-processors to process Personal Data for the purposes of the Support Services;
- (b) Transfer Personal Data outside of the UK as required, provided that the Agency shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Client shall promptly comply with any reasonable request of the Agency, including any request to enter into standard data protection clauses as contained within the relevant Applicable Data Protection Laws.

11 Support Period

The Agency shall, unless the Contract is terminated in accordance with clause 14 of the Conditions, provide the Support Services from the Services Start Date and then for the Term, or where no period is stated, until either party gives to the other party not less than one month's notice in writing to terminate this Contract.

12 Back-Ups

12.1 The Agency will make secure back-up copies of the Website and the Content (Back-Up) on such regular basis as is reasonable for the particular data concerned.

12.2 The Agency will not alter, store, disclose or use any Back-Up except as necessary for the performance by the Agency of its obligation under this Contract.

12.3 The Agency will immediately notify the Client if any Back-Up is lost, becomes corrupted, is damaged or deleted accidentally and shall use its reasonable endeavours to recover or restore the Back-Up as far as possible, within a reasonable period of time.

13 Domains

13.1 Agency's obligations:

- (a) The Agency will use its reasonable endeavours to procure the registration of the domain name requested by the Client;
- (b) The use by the Client of the requested domain name will be subject to the terms and conditions of the relevant domain name registry;
- (c) The Agency may refuse to apply to register any domain name if, in the reasonable opinion of the Agency, the proposed application is being made in bad faith, infringes the rights of any third party, or is in breach of any legal or regulatory requirement.
- (d) The Agency will use its reasonable endeavours to remind the Client when the domain name registration is to be renewed. The Agency will have no obligation to renew the domain name registration unless the Client has paid the Agency's Charges in respect of the domain name renewal. The Agency will not be liable to the Client in respect of any loss it suffers as a result of the non-renewal of the domain name.

13.2 Client's obligations:

- (a) The Client is responsible to comply and continue to comply with the requirements of the domain name registry. The Client shall notify the Agency if, for whatever reason, it is unable to comply with these requirements.
- (b) If the Client wishes the Agency to transfer a domain name to a third party, it shall notify the Agency stating the relevant EPP code or IPS Tag. The Client will be liable to pay any transfer fees raised by the relevant domain name registrar together with the Agency's administration fees for effecting the transfer on behalf of the Client.

Services Annex: App Development / Web App

1 Interpretation

The definitions in this Services Annex apply (in addition to the definitions set out in the Conditions).

Unless otherwise specified, a reference to a specific clause relates to a specific clause in this Services Annex.

1.1 Definitions:

App: the application software or web-based application to be developed as further described in the App Specification.

App Specification: the specification for the App.

Content: the content provided to the Agency by the Client from time to time for incorporation into the App.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

2 Services

2.1 The Agency shall, in collaboration with Client, commence the preparation of the App Specification for the App as appropriate and Agency shall submit the completed App Specification to the Client for approval (which shall not be unreasonably withheld or delayed).

2.2 Upon approval of the Specification by the Client, the Agency shall then develop the App based upon the App Specification.

2.3 When developing an App, the Agency shall use reasonable endeavours to ensure that the App complies with any relevant platform operating system terms and conditions and to obtain the relevant permissions from the platform operators in order that the App may be published and used on such platform operating system.

2.4 Approval by the Client of the App shall occur in accordance with this clause 2.4:

(a) promptly, and in any event within 20 Business Days of completion of the development stage of the App, the Client shall accept or reject such App by issuing the Agency a notice to that effect ("Acceptance/Rejection Notice") which shall contain full details of the material deviation from the Specification. The Client shall only be entitled to issue a Rejection Notice upon the basis that (and by detailing the manner in which) the App exhibits a fault which materially affects the functionality of the App to the extent that a user's ability to use the App is materially impaired;

(b) the Client acknowledges that acceptance of the App shall be deemed to occur on the earliest of the following events:

(i) receipt by the Agency of an Acceptance Notice; or

(ii) if the Client puts the App to any live operational use, other than for the purposes of testing.

(c) If the Client shall serve a valid Rejection Notice in accordance with clause 2.4(a) the Agency shall correct the App within the timeframe agreed by the parties in writing so that they perform in accordance with the relevant App Specifications in all material respects and re-deliver the same to the Client.

2.5 For the avoidance of doubt the Client shall not be entitled to reject the App by reason of any failure to provide any facility or function not specified in the App Specification or on account of deviations from the App Specification which do not materially affect a user's ability to use the App ("Minor Discrepancies"). The Client and Agency shall co-operate with one another to try to rectify such Minor Discrepancies.

3 Changes to the Specification

3.1 Any request to change the App Specification shall be processed in accordance with this clause 3.

3.2 Where the Client proposes any change to any aspect of the App Specification, it shall notify the Agency of this in writing, setting out the reasons for the change and providing full details of the changes required.

3.3 Upon receipt of a notice from the Client pursuant to clause 3.2, and provided that the Agency is prepared to change the App Specification, the Agency shall confirm in writing any impact the change will have on the Charges and the delivery dates for the App.

3.4 If the Client agrees with the impact on the App Specification, Charges and other changes advised by the Agency, the parties shall record that variation to this Contract in writing.

4 Warranties

4.1 The Agency warrants that the App will perform substantially in accordance with the App Specification upon Acceptance. If the App does not so perform, the Agency shall, for no additional charge, carry out any work reasonably necessary in order to ensure that the App substantially complies with the App Specification.

4.2 The warranty set out in 4.1 shall not apply to the extent that any failure of the App to perform substantially in accordance with the App Specification is caused by any Content.

4.3 The Agency does not warrant that the Client's use of the App will be uninterrupted or error-free or that the App will be free from Virus or Vulnerabilities.

Services Annex: Search/Answer Engine Optimisation (SEO/AEO)

1 Interpretation

The definitions in this Services Annex apply (in addition to the definitions set out in the Conditions).

Unless otherwise specified, a reference to a specific clause relates to a specific clause in this Services Annex.

1.1 Definitions:

Brand Guidelines: Client's brand guidelines provided to the Agency from time to time.

Website: the Client's website.

2 Services

2.1 The Services will include (without limitation):

2.1.1 researching keywords and phrases to select appropriate, relevant search terms;

2.1.2 obtaining back links from other related websites and directories in order to generate link popularity and traffic;

2.1.3 editing and/or optimisation of text for various html tags, meta data, page titles, and page text as necessary for search engine optimisation;

2.1.4 analysis and recommendations on the optimal structure of the Website, navigation of the Website, code, etc. for best search engine optimisation purposes;

2.1.5 recommend, as required, additional web pages or content for the purpose of catching keyword/phrase searches; and

2.1.6 create traffic and ranking reports for the Website and any associated web pages showing rankings in the major search engines.

2.2 The Services will not include (without limitation):

- (a) Digital advertising;
- (b) Google Ads; and
- (c) Social media.

2.3 Agency shall:

- (a) provide the Services;
- (b) comply with the Brand Guidelines when performing the Services

all in accordance with the terms of the Contract and any other instructions of the Client with the objective of enhancing and optimising the rankings and prominence of each Website in the results pages of Internet search engines.

2.4 The Client acknowledges and agrees that the Agency does not guarantee any performance, first position or consistent top ten positions for any particular keyword, phrase or search term as it is solely at the discretion of the search engines themselves to list a Website.

2.5 The Client acknowledges and agrees that the Agency does not guarantee:

- (a) to increase traffic (visitors or hits) to a Website;
- (b) to increase leads and sales; and
- (c) to increase page loading speeds.

2.6 The Client acknowledges that the Agency has no control over the policies of search engines with respect to the type of websites and/or content that they accept or the way in which websites are ranked either now or in the future. As a result, search engines may:

- (a) stop accepting submissions from the Agency for an indefinite period of time with or without notice; or

(b) cease to list a Website at its discretion, however should a Website not reappear within thirty (30) days of it not being listed then the Agency will re-optimize the applicable Website based on the current policies of the relevant search engine at a cost to be agreed between the parties, and the Agency shall not be liable to the Client for any such actions of search engines.

2.7 The Agency is not responsible for changes made to the Website by:

- (a) other parties; or
- (b) the Client in choosing to link to or obtain a link from a particular website without prior consultation with the Agency,

that adversely affect the search engine rankings of the Website.

2.8 The Agency shall not be responsible for the Client overwriting actions it has taken as part of the Services on the Website.

3 Client obligations

Solely for the purposes of the Agency providing the Services, the Client agrees to provide the following:

- (a) administrative or back-end access to the Website for analysis of its content and structure;
- (b) permission for the Agency to make changes to the Website for the purpose of optimisation;
- (c) permission for the Agency to communicate directly with any applicable third parties connected with the Website (for example, Client's web designer, search engine provider etc) in order to provide the Services;
- (d) access to existing traffic statistics for the Website in order for analysis and tracking purposes; and
- (e) where the Website is lacking in textual content, the Client will provide additional text content in electronic format for the purpose of creating additional or richer web pages.

Services Annex: Digital advertising management services

1 Interpretation

The definitions in this Services Annex apply (in addition to the definitions set out in the Conditions).

Unless otherwise specified, a reference to a specific clause relates to a specific clause in this Services Annex.

1.1 Definitions:

Account: the digital advertising account used on a Digital Advertising Platform.

Budget: the proposed budget for the Campaign to include the Agency's Charges for their Media Management Services, Click Fees and any fees charged by the Digital Advertising Platforms.

Campaign: the digital marketing campaign led by the Agency.

Click Fee: the fees payable to the advertising provider for each click delivered to the Client's website from a link or listing to a specific search term or targeting criteria.

Digital Advertisement Platform(s): the platforms upon which the Agency will perform the Media Management Services which shall include, without limitation, search engines, Google, Display Network, YouTube etc

Keywords: the words and subject areas to be targeted in the Campaign.

Media Management Services: the digital management services provided by the Agency as more particularly described in the Specification.

2 Media Management Services

2.1 The Client engages the Agency to provide the Media Management Services in the manner set out in the Specification.

2.2 Within 30 days of the parties agreeing the scope and the Budget for the Campaign, the Agency will set up the Campaign on the Digital Advertisement Platforms.

2.3 In its absolute discretion, the Agency may:

- (a) require the Client to terminate or transfer to the Agency, any existing Accounts;
- (b) set up any number of Accounts which the Agency will both own and have exclusive access too.

2.4 The duration of the Campaign shall be set out in the Quotation.

3 Service limitations

The Client acknowledges and accepts that:

- (a) the Digital Advertisement Platforms exclusively control the ranking and placement of websites. This is outside of the Agency's control;
- (b) the Digital Advertisement Platforms regularly change their policies and algorithms which may have a detrimental effect on any Campaign. This is outside of the Agency's control;
- (c) the Agency has given no promises, warranties, representations or guarantees as to the success of the Campaign;
- (d) the effectiveness of the Campaign is determined, in part, by the budget made available for it by the Client.

4 Charges and Payment

4.1 The Charges payable by the Client to the Agency for the Media Management Services are separate from the Click Fees and any fees charged by the Digital Advertising Platforms and will be invoiced separately in the manner set out in the Quotation. Late payment of Charges may result in suspension or termination of the Media Management Services.

4.2 Either:

- (a) The Agency will require the Client to deposit an agreed amount with it to use against Click Fees and any anticipated fees of the Digital Advertising Platforms; or
- (b) The Client will link its own bank account or debit/credit card to the Account.

4.3 The Client hereby authorises the Agency to pay the Click Fees and any fees of the Digital Advertising Platforms on its behalf from Client funds held on its behalf.

5 Limitation of liability

The Agency will not be liable to the Client in respect of:

- (a) any underspend or overspend of authorised Budget;
- (b) any loss suffered by the Client, or any detrimental effect on the Campaign arising from any act or omission of the Digital Advertisement Platforms or any other third party; or
- (c) any claim made against the Client by a third-party in respect of the unlawful use of any Keyword during the Campaign.