



Pragmatic Web Limited

Service Level Terms and Conditions

V2.1

The Client's attention is particularly drawn to the provisions of clause 8.

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

Bespoke Software, means all software written, created or developed by or on behalf of the Supplier for the purposes of or pursuant to the Services, excluding Supplier Software and Third Party Software.

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

Client, means the person or firm who purchases Services from the Supplier as set out in the Order Form.

Client Data, means data, in whatever form, owned, held and/or controlled by the Client which is made available to the Supplier or is otherwise created, collated or collected and/or accessed by the Supplier in connection with the Services.

Client Materials, means any materials provided by the Client to the Supplier.

Client Software, means all software, the Intellectual Property Rights in which are owned by the Client, or licensed to the Client by a Third Party (other than for the purposes of or pursuant to the Services) which are required to be used by the Supplier for the purposes of or pursuant to the Services.

Conditions, means these terms and conditions as amended from time to time in accordance with clause 11.8.

Contract, means the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions and the Order Form if and as may be signed by the Client from time to time and the signing of the Order Form and/or the delivery of the Services by the Supplier to the Client shall be deemed to be unconditional acceptance by the Client of these Conditions and the Order Form.

Contract Commencement Date means the date set out in the Order Form.

Deliverables, means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services.

Documents means any documents and information provided by or obtained through the Supplier, including but not limited to the Deliverables

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



Materials, means the materials to be purchased by the Supplier from third party for the provision of the Services.

New Materials, means all materials (including any presentations, reports, Specifications, designs, user guides, documentation and works) conceived, designed, prepared or created by or on behalf of the Supplier for the purposes of or pursuant to the Services or arising out of the provision of the Services and/or Deliverables excluding Software, Supplier Materials, Client Materials and Third Party Materials.

Order Form, means the form to be prepared by the Supplier and completed and signed by the Client and, in the absence of such form, the Specifications as shall be agreed between the Supplier and the Client in writing from time to time.

Pre-existing Intellectual Property Rights, means Intellectual Property Rights existing before the Contract Commencement Date.

Service Fees, means the fees payable by the Client for the supply of the Services in accordance with clause 5 and the Order Form, including expenses incurred and Materials.

Services, means the services, including the Deliverables, the Support Services and the Website Hosting & Backup Services provided by the Supplier to the Client as set out in the Order Form or as may be agreed in writing between the parties from time to time.

Services Commencement Date has the meaning given to it in the Order Form.

Software: the computer programs used from time to time and any Modification which is acquired by the Client during the subsistence of this Contract.

Specifications: as defined in Annex 1 of the Order Form.

Source Materials, means in relation to the Software all computer instructions (including comments as appropriate) written using a generally recognised human-readable computer language and designed to facilitate the work of computer programmers.

Supplier, means **PRAGMATIC WEB LIMITED** a company registered in England and Wales whose registered address is Ground floor, 19 New Road, Brighton, East Sussex, BN1 1UF and company number 07855805.

Supplier Materials means all materials, equipment, documents and other property of the Supplier the Intellectual Property Rights in which are owned by the Supplier and which are either Deliverables or are incorporated in Deliverables, excluding Third Party Materials, New Materials and Software.

Supplier Software, means software which is proprietary to the Supplier and which has not been created by the Supplier pursuant to or in connection with the Services.

Support Services, means the ongoing support provided by the Supplier as set out in Schedule 1.

Third Party Materials, means all materials which are proprietary to any third party and which are either Deliverables or are incorporated in Deliverables, excluding Supplier Materials, New Materials and Software.

Third Party Software, means software which is proprietary to any third party and which has not been created pursuant to or in connection with the Services.

Website Hosting & Backup Services, means the website hosting services provided by the Supplier as set out in Schedule 2.

1.2 Construction. In these Conditions, the following rules apply:

1.2.1 a **person** includes a natural person, corporate or unincorporated body whether or not having separate legal personality;

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.5 a reference to **writing** or **written** includes e-mails.

2. **Basis of contract**

2.1 The Order Form constitutes an offer by the Client to purchase Services in accordance with these Conditions.

2.2 The offer to purchase the Services from the Supplier shall be deemed to be accepted and the Contract shall come into existence on the Contract Commencement Date as indicated in the Order Form or, in the absence of an Order Form, signed or otherwise, on the date in which the Supplier performed any act in the provision of any of the Services.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's promotional printed matters, website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue and all amounts quoted by the Supplier under the Contract are exclusive of Value Added Tax as chargeable from time to time.

3. **Supply of Services**

3.1 The Supplier shall supply the Services to the Client in accordance with the Order Form in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order Form or otherwise, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law, regulation, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.
- 3.4 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

4. Client's obligations

- 4.1 The Client shall:
- 4.1.1 ensure that the terms of the Order Form (and any information it provides) are complete and accurate;
 - 4.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, as reasonably required by the Supplier, with access to Client Data, Client's Materials, Client Software, Client's facilities and ensure that any such access that may require permission from third party is obtained in advance;
 - 4.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - 4.1.6 adopt the Supplier's systems and processes for smooth delivery of the Services.
- 4.2 If the Supplier'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 the Supplier shall without limiting its other rights or remedies 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 to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
 - 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - 4.2.3 the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default, regardless of whether the Services are completed.

5. Service Fees and payment

- 5.1 The Service Fees for the Services shall be invoiced by the Supplier and paid by the Client, all as set out in the Order Form, in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

- 5.2 The Supplier shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, subsistence, Materials any such other reasonable expenses that may be incurred from time to time and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any Materials.
- 5.3 The Supplier reserves the right to increase its standard Service Fee rates, provided that such charges cannot be increased more than once in any six month period. The Supplier will give the Client written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Client, it shall notify the Supplier in writing within two weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving two weeks' written notice to the Client.
- 5.4 Without limiting any other right or remedy of the Supplier, if the Client fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of four per cent per annum above the then current Royal Bank of Scotland's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.5 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

6. Intellectual property rights

- 6.1 Except as expressly set out in the Conditions:
- 6.1.1 The Client shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including Intellectual Property Rights in:
- (a) the Supplier Software;
 - (b) the Supplier Materials;
 - (c) the Third Party Software;
 - (d) the Third Party Materials;
 - (e) the Supplier's Pre-existing Intellectual Property Rights.
- 6.1.2 The Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Client or its licensors, including:
- (a) the Client Data;
 - (b) the Client Software;

- (c) the Client Materials;
- (d) the New Materials;
- (e) the Bespoke Software;
- (f) Client's Pre-existing Intellectual Property Rights.

6.2 The Supplier shall relinquish his rights in the Intellectual Property Rights in all New Materials and/or Bespoke Software on payment of the Service Fees. The Supplier hereby assigns, and shall procure that all third parties who may have any right, title or interest in New Materials and/or Bespoke Software shall assign, in each case by way of present assignment of future rights, all New Materials and/or Bespoke Software absolutely to the Client with full title guarantee (free from all charges, incumbrances and other rights exercisable by third parties). The Supplier shall procure the waiver of any Moral Rights in or relating to any New Materials and/or Bespoke Software.

6.3 The Client hereby grants the Supplier a non-exclusive, non-transferable licence to use the Client Software, Client Materials and Client Data solely to the extent and for the period necessary for the Supplier to perform its obligations under the Conditions, such licence to terminate no later than on the termination of the Conditions. The Supplier shall comply with any terms or instructions given by the Client from time to time in relation to the use of the Client Software, Client Materials and Client Data.

6.4 The Supplier represents that it has and will continue to have the necessary rights and licences to comply with its obligations under this Clause 6 and undertakes to execute, do and/or procure the execution or doing of such things as are reasonably necessary in order to achieve, perfect or record the assignment or grant of rights and licences in accordance with this Clause 6.

6.5 Any physical media forming part of any Deliverables shall be owned by the Client and the Supplier hereby transfers and agrees to procure the transfer with full title guarantee (free from all charges, incumbrances and other rights exercisable by third parties) of all right, title and interest in such media to the Client.

6.6 Whenever the Supplier provides Bespoke Software in object code form, the Supplier shall at the same time provide to the Client the Source Materials in respect of such Bespoke Software.

7. Confidentiality

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

8. Limitation of liability

- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 8.1.2 fraud or fraudulent misrepresentation; or
 - 8.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.2 Subject to clause 8.1:
- 8.2.1 the Supplier shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 8.2.2 the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the value of the Service Fees paid under the Contract.
- 8.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 This clause 8 shall survive termination of the Contract.

9. Termination

- 9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 9.1.1 the other party commits a material breach of the Contract and if such a breach is remediable fails to remedy that breach within seven days of that party being notified in writing of the breach;
 - 9.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or being a company is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or being an individual is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or being a partnership has any partner to whom any of the foregoing apply;
 - 9.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than where a company for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 9.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party being a company other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 9.1.5 the other party being an individual is the subject of a bankruptcy petition or order;
 - 9.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 9.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party being a company;
 - 9.1.8 a floating charge holder over the assets of that other party being a company has become entitled to appoint or has appointed an administrative receiver;
 - 9.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 9.1.10 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1.2 to clause 9.1.9 inclusive;
 - 9.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - 9.1.12 the other party being an individual dies or, by reason of illness or incapacity whether mental or physical, is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party one month's written notice.
- 9.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Client and the Supplier if the Client becomes subject to any of the events listed in clause 9.1.2) to clause 9.1.2, or the Supplier reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

10. Consequences of termination

- 10.1 On termination of the Contract for any reason:

- 10.1.1 the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;
- 10.1.2 the Client shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 10.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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; and
- 10.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. General

11.1 Force majeure:

- 11.1.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 11.1.2 The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

11.2 Assignment and subcontracting:

- 11.2.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 11.2.2 The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.3 Notices:

- 11.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office if a company or in any other case

its principal place of business, or sent by email to the other party's main email address.

- 11.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, on the next Business Day after transmission.
- 11.3.3 This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall include e-mails.
- 11.4 **Waiver:**
- 11.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 11.5 **Severance:**
- 11.5.1 If a court or any other competent authority finds that any provision or part of any provision of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 11.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 11.6 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 11.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.8 **Variation:** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

- 11.9 **Entire agreement:** The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 11.10 **Implied terms:** 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 trade, custom, practice or course of dealing.
- 11.11 **Data Protection:**
- 11.11.1 The Supplier will need to store personal information about the Client in order to provide the Client with the Services, and may disclose that information to third parties in the course of acting for the Client.
- 11.11.2 The Supplier will also keep some of the Client’s personal information so that the Supplier can contact the Client with updates and information about its services, which may be of interest to the Client. This information will not be passed to any third party for marketing purposes, but if the Client would prefer the Supplier not to keep it at all, the Client should notify the Supplier in writing.
- 11.11.3 The Client has a right of access under the data protection legislation to the personal data that the Supplier holds about the Client. Information stored for marketing purposes will only be used as a means of contacting the Client, but if the Client would prefer the Supplier not to keep it at all, the Client should notify the Supplier in writing.
- 11.12 **Governing law and jurisdiction:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation including non-contractual disputes or claims, shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

12. Consequences of cancellation by the Client

- 12.1 The Client may cancel the booking of the Services prior to the Services Commencement Date, subject to giving written notice to the Supplier and upon making payment to the Supplier of the cancellation charges as set out in the table below:

Cancellation Period	Cancellation Charge
60 days or more	Nil
30 to 59 days	50%
14 to 29 days	60%
7 to 13 days	70%
Up to 7 days	80%

The percentages shown above are of the quoted or estimated Service Fee and the periods relate to the number of days before the agreed Services Commencement Date.

Schedule 1 – Support services

1. Interpretation

The following definitions and rules of interpretation apply in this schedule.

1.1 Definitions:

Acceptance, means the acceptance or deemed acceptance of the Site by the Client pursuant to clause 7.

Acceptance Tests, means the acceptance test to be carried out by the Supplier as set out in the Order Form.

Commercially Reasonable Efforts, means the same degree of priority and diligence with which the Supplier meets the support needs of its other similar customers.

Client Cause, means any of the following causes:

- (a) any improper use, misuse or unauthorised alteration of the Software by the Client;
- (b) any use of the Software by the Client in a manner inconsistent with the then-current Documents;
- (c) the use by the Client of any hardware or software not provided by the Supplier or approved by the Supplier in the Specifications for use by the Client in connection with the Software; or
- (d) the use of any other version or release of the Software.

Fault, means any failure of the Software to operate in all material respects in accordance with the Specifications and Documents, including any failure or error referred to in the Service Level Table.

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

Higher-level Support, means any higher-level support provided by the Supplier

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

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

Project Plan, means the timetable for setting up the Site and performing the Support Services as set out in the Order Form or as agreed from time to time.

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

Service Level Table, means the table set out in paragraph 5.1.

Site, means the website/s to which the Support Services relate.

Site Software, means the software for the Site commissioned by the Client and agreed between the parties.

Site Specifications, means the Specifications for the Site set out in the Order Form.

Solution, means either of the following outcomes:

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

Support Hours, means the support hours as set out in the Order Form

Support Period, means the Term and, if requested by the Client, any period during which the Client transfers the Support Services to an alternate service provider.

Support Request, means request made by the Client in accordance with this schedule for support in relation to the Software, including correction of a Fault.

Support Services, means maintenance of the then-current version or release of the Software, including Help Desk Support and Higher-level Support, but excluding any Out-of-scope Services.

Term, means the period starting on the Contract Commencement Date and ending on the date of termination of the Contract in accordance with these Conditions.

Visitor, means a visitor to the Site.

Web Content, means the content provided to the Supplier by the Client from time to time for incorporation in the Site.

1.2 All initial capitalised terms in this schedule shall have the meaning given to them in the Contract.

2. Support Services

2.1 During the Support Period the Supplier shall perform the Support Services during the Support Hours in accordance with the Service Levels.

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

2.2.1 provide Help Desk Support by means of telephone and e-mail address, both as set out in the Order Form;

2.2.2 commit appropriate resources to the provision of Higher-Level Support;

- 2.2.3 where Help Desk Support is not provided within the relevant Service Level response time and the Client escalates its Support Request provide Higher-Level Support;
 - 2.2.4 use Commercially Reasonable Efforts to correct all Faults notified under paragraph 4.3.1; and
 - 2.2.5 provide technical support for the Software in accordance with the Service Levels.
- 2.3 Any Higher-level Support requested by the Client and 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 the Higher-level Support was sought.
- 2.4 The Supplier may reasonably determine that any services are Out-of-scope Services. If the Supplier makes any such determination, it shall promptly notify the Client of that determination.
- 2.5 The Client acknowledges that the Supplier is not obliged to provide Out-of-scope Services.

3. Fees

- 3.1 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 Service Fees.
- 3.2 The provision of Support Services outside the Support Period or outside the Supplier's offices or the provision of Out-of-scope Services shall be charged for at the applicable time and materials rates set out in the Order Form.

4. Submitting Support Requests and access

- 4.1 The Client may request Support Services by way of a Support Request.
- 4.2 Each Support Request shall include a description of the problem and the start time of the incident.
- 4.3 The Client shall provide the Supplier with:
 - 4.3.1 Client Data;
 - 4.3.2 prompt notice of any Faults; and
 - 4.3.3 such output and other data, documents, information, assistance and remote access to the Client System, as are reasonably necessary to assist the Supplier to reproduce operating conditions similar to those present when the Client detected the relevant Fault and to respond to the relevant Support Request.
- 4.4 All Support Services shall be provided from the Supplier's office.

4.5 The Client acknowledges that, to properly assess and resolve Support Requests, it may be necessary to permit the Supplier direct access at the Client site to the Client system and the Client's files, equipment and personnel.

4.6 The Client shall provide such access promptly, provided that the Supplier complies with all the Client's security requirements and other policies and procedures relating to contractors entering and working on the Client Site notified to the Supplier.

5. Service Levels

5.1 The Supplier shall:

5.1.1 prioritise all Support Requests based on its reasonable assessment of the severity level of the problem reported; and

5.1.2 respond to all Support Requests in accordance with the responses and response times specified in the Service Level Table set out in the Order Form.

5.2 The parties may, on a case-by-case basis, agree in writing to a reasonable extension of the Service Level response times.

5.3 The Supplier shall give the Client regular updates of the nature and status of its efforts to correct any Fault.

6. Client responsibilities

6.1 The Client shall be responsible for the accuracy and completeness of the Web Content.

6.2 The Supplier shall not be liable for any delays in implementing the Project Plan resulting from the Client's failure to fulfil any of its obligations set out in the Project Plan. The Supplier reserves the right to invoice the Client for any additional expenses reasonably incurred by the Supplier as a result of such delays.

7. Acceptance

7.1 The Acceptance Tests shall test compliance of the Site with the Site Specifications. The form and detail of the Acceptance Tests are set out in the Order Form.

7.2 The Supplier shall run the Acceptance Tests and Acceptance of the Site shall occur when the Site has passed the Acceptance Tests. The Supplier shall notify the Client when the Acceptance Tests have been passed.

7.3 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Client, or by one of the Client's sub-contractors or agents for whom the Supplier has no responsibility (Non-Supplier Defect) or by Third Party Software, the Site shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. The Supplier shall provide assistance reasonably requested by the Client in remedying any Non-Supplier Defects by supplying additional services or products. If so requested, the Client shall pay the Supplier in full for all such additional services and products at the Supplier's then current fees and prices.

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

- 7.4.1 the Client uses any part of the Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
- 7.4.2 the Client unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of seven working days from the date on which the Supplier is ready to commence running such Acceptance Tests or retests.

8. Warranties

- 8.1 The Supplier warrants that the Site will perform substantially in accordance with the Site Specifications for a period of 30 days from Acceptance. If the Site does not so perform, the Supplier shall, for no additional charge, carry out any work necessary in order to ensure that the Site substantially complies with the Site Specifications.
- 8.2 The warranty set out in clause 8.1 shall not apply to the extent that any failure of the Site to perform substantially in accordance with the Site Specifications is caused by the Site Software or any Web Content.
- 8.3 This Contract sets out the full extent of the Supplier's obligations and liabilities in respect of the supply of the Support Services. All conditions, warranties or other terms concerning the Support Services which might otherwise be implied into this Contract or any collateral contract whether by statute or otherwise are hereby expressly excluded.

Schedule 2 – Web hosting and backup services

1. Interpretation

The definitions and rules of interpretation in this Schedule 2 apply in this Contract.

1.1 Definitions:

Hosted System, means a combination of hardware, software and networking elements that comprise an information technology system and may consist of a dedicated system for the Client's use only, or the right to use certain parts of a shared system that the Supplier maintains for its clients, or a combination of some dedicated elements and some shared elements.

Site, means the website/s to be hosted by the Supplier pursuant to this Contract as may agreed in the Order Form and/or from time to time.

Web Content, means the content provided to the Supplier by the Client from time to time for incorporation in the Site.

Website Hosting & Backup Services, means the hosting and related services to be provided pursuant to the Order Form.

1.2 All initial capitalised terms in this schedule shall have the meaning given to them in this Contract.

2. Website Hosting & Backup Services

2.1 The parties have agreed that the Supplier shall provide the Client with Website Hosting & Backup Services on the terms and conditions set out in this Contract in general and this Schedule 2 in particular.

2.2 The Client hereby acknowledges in relation to the Website Hosting & Backup Services that:

2.2.1 the Supplier does not warrant that the Website Hosting & Backup Services will be uninterrupted, error-free or completely secure;

2.2.2 there are risks inherent in Internet connectivity that could result in the loss of your privacy, Confidential Information and property;

2.2.3 the Supplier shall not be liable for any unauthorised access to the Client's Data;

2.2.4 should the requirements of the Website Hosting & Backup Services alter, including but not limited to substantial increase in traffic, that the Website Hosting & Backup Services may be interrupted until new arrangements are entered into to accommodate such change;

2.2.5 third party services are used by the Supplier in connection with the Website Hosting & Backup Services and that the Supplier shall not be liable for all or any of their actions or omissions; and

2.2.6 different terms that may be incorporated into the Client's Website Hosting & Backup Services if a portion of it are to be provided in or by companies in countries outside England & Wales.

3. Client's Obligations

3.1 The Client shall:

3.1.1 use reasonable security precautions in connection with your use of the Services;

3.1.2 take all reasonable steps to mitigate the risks inherent in the provision of the Services, including Client data and/or other data loss ;

3.1.3 comply with the laws applicable to your use of the Services;

3.1.4 cooperate with the Supplier's reasonable investigation of Service outages, security problems and any suspected breach of Contract;

3.1.5 keep account permissions, billing, and other account information up to date; and

3.1.6 pay when due the fees for the Hosted Services.

4. Back-up Services

4.1 The Supplier shall only be under obligation to back up the Client's Data where backup services were purchased.

4.2 If the Client purchase backup services, the supplier does not promise to retain any data backup(s) for longer than the agreed data retention period as agreed in the Order Form.

4.3 The Supplier shall not be liable for loss of data to the extent that the data has changed since the time that the Supplier performed a backup.

5. Site content

5.1 The Supplier shall update the Site with Web Content provided from time to time by the Client, as set out in the Order Form. The Client shall ensure that the Web Content do not infringe any applicable laws, regulations or third party rights such as 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**).

5.2 The Supplier shall include only the Web Content on the Site. The Client acknowledges that the Supplier has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. The Supplier reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. The Supplier shall notify the Client if it becomes aware of any allegation that content on the Site may be Inappropriate Content.

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

- 5.4 The Supplier may include the statement "Powered by..." and the name of the Supplier on the home page of the Site in a form to be agreed.