



Terms & Conditions

MKDO Ltd, trading as “Make Do”

Updated: 13 June 2023

TERMS AND CONDITIONS OF MKDO LIMITED t/a MAKE DO

1. Definitions and interpretation

The following definitions and rules of interpretation apply in these Terms and Conditions.

1.1. Definitions:

“Agreed Period”: the recurring period of time specified in a Service Level Agreement. This will usually be monthly but can be a longer or shorter period.

“Agreement”: has the meaning set out at Clause 2 .

“Applicable Data Protection Laws”:

- a) To the extent UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

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

“Business Day”: a day, other than a Saturday, Sunday or public holiday in England.

“Business Hours”: the period from 9.00 am to 5.00 pm on any Business Day, unless agreed otherwise by the parties in relation to specified Services.

“Charges”: the charges payable by the Customer for the supply of the Services.

“Commencement Date”: the date specified in the Additional Documents or otherwise agreed between the parties in writing as the date on which the Supplier will commence supply of the Services.

“Confidential Information”:

- (a) all information relating to the business, assets, affairs, pricing, customers, clients, suppliers, or plans, intentions, marketing strategies and campaigns or market opportunities of the Disclosing Party;
- (b) all technical or commercial know-how, specifications, inventions, operations, processes, product information, initiatives, designs, trade secrets, software (including source code), information relating to research and/or development work, proposals for services or products and engineering designs and/or development;
- (c) any other information of a confidential or proprietary nature not generally known to the public, whether of a technical, business, or other type, that is disclosed by the Disclosing Party arising out of or in connection with the Agreement and which could reasonably have been understood by the Receiving Party to be proprietary or confidential to the Disclosing Party (including information marked as “Confidential” by the Disclosing Party).

“Continual Improvement”: Services to be provided by the Supplier under a Service Level Agreement which fall outside the scope of Standard Support and Maintenance.

“Customer”: the person, company, organisation, business or other legal entity which purchases the Services from the Supplier.

“Customer Personal Data”: any personal data which the Supplier processes in connection with the Agreement, in the capacity of a processor on behalf of the Customer.

“Disclosing Party”: the party disclosing Confidential Information.

“Additional Documents”: any statements of work, confirmation of order documents, Service Level Agreements, letters, emails or other written documents which:

- (a) describe the Services that the parties have agreed will be provided to the Customer by the Supplier; and / or
- (b) set out any further terms and conditions relating to the Services which have been agreed by the parties.

“EU GDPR”: the General Data Protection Regulation ((EU) 2016/679).

“Flexible Package”: a package of hours that can be utilised at any time by the Customer for the provision of the Services.

“Hosting Services”: website hosting services to be provided by the Supplier.

“Intellectual Property Rights”: patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Order”: an order placed by the Customer for the purchase of Services.

“Receiving Party”: the party receiving Confidential Information.

“Rollover Basis”: any hours allocated on this basis which are not utilised by the Customer during the relevant Agreed Period can be carried forward to the next Agreed Period.

“Server”: the computer server equipment operated by the Supplier and/or any third party provider in connection with the provision of the Hosting Services.

“Service Level Agreement”: a service level agreement agreed and executed by the Supplier and the Customer under the Agreement and containing the applicable information set out in Schedule 1.

“Services”: professional, consulting, hosting, support and maintenance services and any related services to be supplied, and obligations to be performed, by the Supplier.

“Standard Support and Maintenance”: Services to be provided by the Supplier under a Service Level Agreement for general support and maintenance.

“Supplier”: MKDO Limited trading as Make Do, a company incorporated and registered in England with company registration number 08453062 whose registered office is at BBIC, Innovation Way, Barnsley, S75 1JL.

“Terms and Conditions”: these terms and conditions as amended from time to time in accordance with Clause 16.2.

“UK GDPR”: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

“Use It or Lose It Basis”: any hours allocated on this basis which are not utilised by the Customer during the relevant Agreed Period cannot be allocated to future Agreed Periods and are no longer available to the Customer.

“VAT”: value added tax chargeable in the UK.

- 1.2. The Schedules to these Terms and Conditions form part of the Agreement and shall have effect as if set out in full in the body of the Agreement. Any reference to these Terms and Conditions or the Agreement includes the Schedules to these Terms and Conditions.
- 1.3. Clause, Schedule and paragraph headings shall not affect the interpretation of the Agreement.
- 1.4. Words and phrases used in the Agreement shall be interpreted in accordance with their ordinary meaning except and to the extent that a particular definition is specified in the Agreement.
- 1.5. Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those term
- 1.6. A reference to a statute or statutory provision is a reference to it as replaced, extended or re-enacted from time to time and includes primary and delegated legislation and any provision of EU law having direct effect or direct applicability in the UK.
- 1.7. References to clauses are to the clauses of the Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.8. A reference to **writing** or **written** includes email.

2. The Agreement

2.1. The contract between the Supplier and the Customer for the provision of the Services consists of:

- 2.1.1. these Terms and Conditions;
- 2.1.2. where applicable, the additional terms and conditions set out at Schedule 1 (Service Level Agreement), Schedule 2 (Flexible Packages) or Schedule 3 (Hosting Services); and
- 2.1.3. the Additional Documents,

(collectively, **“the Agreement”**).

2.2. In the event of any inconsistency or conflict between any of the above documents, the following order of precedence shall apply but only to the extent of such inconsistency or conflict:

- 2.2.1.** the provisions set out in Clauses 1 – 16 of these Terms and Conditions;
- 2.2.2.** any additional terms and conditions set out in Schedule 1, Schedule 2 or Schedule 3;
- 2.2.3.** any additional terms and conditions set out in the Additional Documents.

3. Supplier Responsibilities

3.1. The Supplier shall at all times during the term of the Agreement:

3.1.1. provide the Services:

3.1.1.1. during Business Hours unless the parties agree in writing that Services are required outside of Business Hours (including on an urgent or emergency basis), and the Charges payable to the Supplier for providing the Services on that basis;

3.1.1.2. using reasonable skill, care and diligence;

3.1.1.3. in compliance with Applicable Laws; and

3.1.1.4. in compliance with the Supplier's Privacy Policy;

3.1.2. use reasonable endeavours to meet any performance dates or deadlines specified in the Additional Documents, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence for performance of the Services.

4. Customer responsibilities

4.1. The Customer shall at all times during the term of the Agreement:

4.1.1. use the Services in accordance with the Agreement;

4.1.2. cooperate with the Supplier in all matters relating to the Services;

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

4.1.4. comply promptly with all reasonable instructions given by the Supplier;

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

4.1.6. not use the Services, or allow them to be used, for unlawful purposes or for the publication, linking to, issue or display of any unlawful or objectionable material (including any pirated content, material which is obscene, threatening, malicious, harmful, abusive, defamatory or which breaches any third party's Intellectual Property Rights or which encourages criminal acts or contains any virus, worm, malware, trojan horse or harmful code);

4.1.7. without affecting its other obligations under the Agreement, comply with all Applicable Laws in using the Services and with respect to the Customer's activities under the Agreement;

4.1.8. inform the Supplier promptly of any problems with the Customer's receipt of the Services or of any circumstances which come to the Customer's attention which could impede or otherwise affect the Supplier's performance of the Services, providing as much detail as possible;

4.1.9. inform the Supplier of all health and safety and security requirements that apply at any of the Customer's premises; and

- 4.1.10. comply with any additional responsibilities of the Customer set out in the Additional Documents.
- 4.2. If the Supplier's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.
- 4.3. Without limiting or affecting any other right or remedy available to it, the Supplier may suspend or limit the Customer's access to the Services, in whole or in part, without incurring any liability to the Customer if:
 - 4.3.1. the Supplier determines that such action is necessary to prevent disruption or harm to the Supplier's systems or to respond to any actual or potential security or availability concern;
 - 4.3.2. this is necessary to enable the Supplier to carry out urgent maintenance of or repairs to the Supplier's systems;
 - 4.3.3. the Customer is using the Services in a manner which is unlawful, unauthorised, inappropriate or fraudulent;
 - 4.3.4. required to do so by a court order or an order or instruction from a competent administrative authority;
 - 4.3.5. the Customer's failure to perform its obligations under the Agreement prevents the Supplier from performing its obligations under the Agreement; or
 - 4.3.6. the Customer does not pay any Charges due under this Agreement within 15 days of the relevant due date, until payment in full has been made by the Customer.

5. Reporting

- 5.1. Where Services are being provided to the Customer under a Service Level Agreement and / or the Customer has purchased a Flexible Package, the Supplier will provide reports to the Customer on a regular basis as agreed between the parties or, subject to Clause 5.3, when requested by the Customer.
- 5.2. Each report provided by the Supplier under Clause 5.1 above will:
 - 5.2.1. Include a breakdown of the Services provided by the Supplier on a month by month basis and the time spent on each activity;
 - 5.2.2. Update the Customer on the number of hours utilised by the Customer by month and the number of hours that remain to be utilised by the Customer; and
 - 5.2.3. Report on such other matters as the Supplier considers appropriate.
- 5.3. Such reports can also be provided at any time by the Supplier following the Customer making a written request to their Account Manager, subject to the time taken by the Supplier to generate the requested report being deducted from the hours allocated to the Customer.

6. Charges and payment

- 6.1. In consideration of the supply of the Services by the Supplier, the Customer shall pay the Charges. The Charges shall be payable in such a way as agreed in writing by the parties.
- 6.2. In addition to the Charges, the Customer shall reimburse the Supplier for:
 - 6.2.1. any expenses reasonably incurred by the Supplier in connection with the Services; and
 - 6.2.2. the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services, provided such costs have been approved by the Customer.
- 6.3. The Supplier shall invoice the Customer for the Charges at the intervals specified in the Additional Documents or, otherwise, at the appropriate time. All invoices shall be issued and paid in pounds sterling.
- 6.4. All sums payable under the Agreement are exclusive of VAT and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice.
- 6.5. The Customer shall pay each invoice properly due, issued and submitted by Supplier within 21 days of receipt of that invoice.
- 6.6. If the Customer fails to pay any undisputed sum which is due to the Supplier under the Agreement by the due date then, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, or at 4% a year for any period when that base rate is below 0%.
- 6.7. The Supplier reserves the right to increase the Charges by up to [5]% on an annual basis, with effect from the anniversary of the Commencement Date, provided it gives the Customer written notice of the proposed increase at least 30 days prior to the relevant anniversary.

7. Intellectual Property Rights

- 7.1. All Intellectual Property Rights owned by either party prior to the Commencement Date or developed independently from the Services ("**Owned IP**") shall remain in the ownership of such party or the relevant third-party owners (as the case may be) and nothing in the Agreement shall transfer any rights in or to such Owned IP.
- 7.2. The Supplier grants to the Customer during the term of the Agreement and at no additional cost, a non-exclusive, royalty-free, non-transferable licence to use such Supplier Owned IP as is required to use and benefit from the Services in accordance with the Agreement. The Customer shall not sub-license, assign or otherwise transfer the rights licensed to it under this Clause 7.2 without the prior written consent of Supplier.
- 7.3. The Customer grants to the Supplier during the term of the Agreement a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use such Customer Owned IP as is required to perform the Services.
- 7.4. The Supplier hereby assigns to the Customer, with full title guarantee and free from all third party rights, any Intellectual Property Rights and all other rights developed by or created by the Supplier specifically for the Customer in providing any products to the Customer as part of the Services.
- 7.5. Subject to the foregoing, each party shall be entitled to use in any way it deems fit any skills, techniques or know-how acquired or developed or used in connection with the Services or otherwise in connection with the Agreement provided always that such skills, techniques or know-how do not infringe the other party's Intellectual Property Rights now or in the future or disclose or breach the confidentiality of the other party's Confidential Information.
- 7.6. All WordPress CMS assets are declared as open-source and covered by the GPL v2 licence. More information about this can be found on the WordPress website (<https://wordpress.org/about/license/>).

8. Indemnity

- 8.1. The Supplier shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result of or in connection with any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables).

9. Confidentiality

- 9.1. The Receiving Party shall not disclose, use, or communicate Confidential Information to any person, except:
 - 9.1.1. its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Receiving Party's rights or carrying out its obligations under or in connection with the Agreement. The Receiving Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the Disclosing Party's Confidential Information are subject to obligations of confidentiality corresponding to those which bind the Receiving Party; and

- 9.1.2. to the extent the Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of the disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 9.1.2, it takes into account the reasonable requests of the Disclosing Party in relation to the content of the disclosure.
- 9.2. Notwithstanding the foregoing, the restrictions of this Clause 9 shall not apply to information that:
- 9.2.1. was already in the public domain at the time of its communication to the Receiving Party;
- 9.2.2. enters the public domain through no fault of the Receiving Party subsequent to the time of its communication to the Receiving Party;
- 9.2.3. was in the Receiving Party's lawful possession free of any obligation of confidence at the time of its communication to the Receiving Party;
- 9.2.4. is developed by the Receiving Party independently of and without reference to Confidential Information; or
- 9.2.5. is lawfully disclosed to the Receiving Party by a third party, provided the Receiving Party does not know of any obligation of confidentiality restricting disclosure by the third party.
- 9.3. A party shall not be in breach of its obligations under this Clause 9 if it is required to disclose any Confidential Information by law, rule, regulation, regulatory authority, judicial or governmental order or other legal process, provided the Receiving Party provides, if reasonably practicable or legally permissible, at least 7 calendar days' prior written notice to the Disclosing Party prior to any disclosure.
- 9.4. The Receiving Party shall take all reasonable steps to ensure that the Confidential Information to which it has access is not disclosed or distributed by its employees, officers, representatives, contractors, subcontractors or advisers in violation of the terms of the Agreement.
- 9.5. This Clause 9 shall survive termination of the Agreement for any reason.

10. Data protection

- 10.1. For the purposes of this Clause 10, the terms **Commissioner, controller, data subject, personal data, personal data breach, processor** and **processing**, shall have the meaning given to them in the UK GDPR.
- 10.2. Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 10.3. The parties have determined that, for the purposes of Applicable Data Protection Laws, the Supplier shall process the personal data set out in Schedule 4 as processor on behalf of the Customer.
- 10.4. Should the determination in Clause 10.3 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this Clause 10 and Schedule 4.
- 10.5. In relation to the Customer Personal Data, paragraph 2 of Schedule 4 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.

10.6. The Supplier shall, in relation to Customer Personal Data:

- 10.6.1. process that Customer Personal Data only on the documented instructions of the Customer, set out in paragraph 2 of Schedule 4, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Data Protection Laws as the basis for processing Customer Processor Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Data Protection Laws unless those Applicable Data Protection Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall immediately inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
- 10.6.2. implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against its accidental loss, damage or destruction, including inter alia as appropriate:
 - 10.6.2.1. the pseudonymisation and encryption of Customer Personal Data;
 - 10.6.2.2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - 10.6.2.3. the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and
 - 10.6.2.4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

In assessing the appropriate level of security the Supplier shall take into account in particular the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Data transmitted, stored or otherwise processed.

- 10.6.3. ensure, and procure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 10.6.4. promptly assist the Customer in responding to any request from a data subject and in ensuring compliance with the Customer's obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner, supervisory authorities or other regulators and, in particular, the Supplier shall promptly notify the Customer if it receives any complaint, notice or communication (whether from the Commissioner, any data subject, supervisory authority or other third party) which relates to processing of Customer Personal Data;
- 10.6.5. notify the Customer within 5 Business Days after becoming aware of a personal data breach;
- 10.6.6. at the written direction of the Customer, delete or return to the Customer all Customer Personal Data on termination or expiry of the Agreement, and certify to the Customer in writing it has done so, unless the Supplier is required by Applicable Data Protection Law to continue to process that Customer Personal Data, in which case the Supplier shall promptly notify the Customer, in writing, of what that Applicable Data Protection Law is and shall only be permitted to process that Customer Personal Data for the specific purpose so-notified, and all other requirements set out in this Clause 10 shall continue to apply to such Customer Personal Data notwithstanding the termination or expiry of the Agreement for as long as such Customer Personal Data is processed by the Supplier. For the purposes

of this Clause 10.6.6 the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and

- 10.6.7. maintain adequate records, and, on the Customer's request, make available such information as the Customer may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Customer or the Customer's designated auditor, to demonstrate its compliance with Applicable Data Protection Laws and this Clause 10.
- 10.7. The Supplier shall not, without the prior written consent of the Customer (and in any event subject to the Supplier providing the Customer with reasonable evidence that such activity is being undertaken in full compliance with Applicable Data Protection Laws):
 - 10.7.1. appoint or replace (or change the terms of the appointment of) any other processor in relation to Customer Personal Data or transfer any Customer Personal Data to the same; or
 - 10.7.2. carry out, via itself or via any other processor, any processing of Customer Personal Data, or transfer any Customer Personal Data, outside of the UK, including processing Customer Personal Data on equipment situated outside of the UK.

11. Limitation of liability

- 11.1. References to liability in this Clause 11 include every kind of liability arising under or in connection with the Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2. Neither party may benefit from the limitations and exclusions set out in this Clause 10 in respect of any liability arising from its deliberate default.
- 11.3. Nothing in this Clause 11 shall limit the Customer's payment obligations under the Agreement.
- 11.4. Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:
 - 11.4.1. death or personal injury caused by negligence;
 - 11.4.2. fraud or fraudulent misrepresentation;
 - 11.4.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 11.5. Subject to Clause 11.3 and Clause 11.4:
 - 11.5.1. the Supplier shall have no liability to the Customer for loss of profits or anticipated profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, damage to or loss of use or corruption of software, data or information, loss of or damage to goodwill or indirect or consequential loss or damage suffered by the Customer;
 - 11.5.2. the Supplier's total liability to the Customer for all loss or damage arising in connection with the performance or contemplated performance of the Agreement shall be limited to 100% of all amounts paid by the Customer under the Agreement in the period of 12 months prior to the date on which the relevant claim first arose.
- 11.6. The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other

professional costs and expenses) suffered or incurred or paid by the Supplier arising out of or in connection with:

- 11.6.1. any claim or action brought against the Supplier:
 - 11.6.1.1. by any third party arising out of or in connection with the provision of the Services, to the extent that such claim or action arises from the breach, negligent performance or failure or delay in performance of the Agreement by the Customer or any of its officers, directors, employees, agents, contractors or consultants;
 - 11.6.1.2. for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of any documents, information, items or materials provided by the Customer to the Supplier in connection with the Services;
- 11.6.2. any breach of warranty by the Customer;
- 11.6.3. any breach by the Customer of any licence of third party software or other third party Intellectual Property Rights utilised in relation to any products provided to the Customer as part of the Services;
- 11.6.4. the Customer's breach or negligent performance or non-performance of its obligations under the Agreement; or
- 11.6.5. enforcement of the Agreement by the Supplier including (but not limited to) action taken to recover any outstanding Charges or other sums which are properly due to the Supplier under the Agreement.

12. Complaints

- 12.1.** If the Customer is dissatisfied with any aspect of the Services it can bring this to the attention of the Supplier using the following methods:
 - 12.1.1.** Email: complaints@makedo.net
- 12.2.** When making a complaint, the Supplier will need to provide their name and contact details and clearly explain the nature of the complaint and the action that the Customer is requesting the Supplier to take.
- 12.3.** The Supplier will respond to any Customer complaint within 48 hours of receipt and will use reasonable efforts to resolve such complaint within 28 days.

13. Termination

- 13.1. Either party may terminate this Agreement at any time by giving no less than 90 days prior written notice to the other party, or such other period of notice as may be agreed in writing between the parties.
- 13.2. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if the other party:
 - 13.2.1. commits a material breach of any term of the Agreement and (if such breach is remediable) fails to remedy that breach within 30 days after being notified in writing to do so;

- 13.2.2. repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
 - 13.2.3. 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; or
 - 13.2.4. suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 13.3. Without affecting any other right or remedy available to it, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if:
- 13.3.1. the Customer fails to pay any amount due under the Agreement on the due date for payment; or
 - 13.3.2. there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 13.4. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Agreement if:
- 13.4.1. the Customer fails to pay any amount due under the Agreement on the due date for payment; or
 - 13.4.2. the Customer becomes subject to any of the events listed in Clause 13.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them; or
 - 13.4.3. the Customer reasonably believes that the Customer is about to become subject to any of the events listed in Clause 13.1.3.

14. Consequences of termination

- 14.1. On termination of the Agreement the Customer 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 Customer immediately on receipt
- 14.2. Termination of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 14.3. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall remain in full force and effect.

15. Force Majeure

- 15.1. Neither party shall be in breach of the Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly.

16. **General**

- 16.1. **No partnership or agency:** Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 16.2. **Variation:** No variation of the Agreement shall be effective unless it is agreed in writing by the parties (or their authorised representatives).
- 16.3. **Waiver:** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.4. **Severance:** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.

16.5. Entire agreement:

- 16.5.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.5.2. Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Agreement.

16.6. Assignment:

- 16.6.1. The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement;
- 16.6.2. The Customer shall not assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of the Supplier.

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

16.8. Notices:

- 16.8.1. Any notice required to be given to a party under or in connection with the Agreement shall be in writing and shall be sent by email to the authorised representative of that party. Such notice shall be deemed to have been received at the time of transmission of the email.
- 16.8.2. 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.

- 16.9. **Governing law:** The Agreement 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 interpreted in accordance with the law of England and Wales.
- 16.10. **Jurisdiction:** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 Service Level Agreements

- 1.** A Service Level Agreement shall take effect when signed by or on behalf of the Supplier and the Customer.
- 2.** The Service Level Agreement may specify some or all of the following (as applicable):
 - 2.1.** A description of the Services to be provided by the Supplier;
 - 2.2.** Any Customer obligations or dependencies which may impact on the provision of the Services;
 - 2.3.** The representative(s) of the Customer who is / are authorised to engage with and give instructions to the Supplier in respect of the Service Level Agreement;
 - 2.4.** The number of hours the Supplier has allocated to the Customer to provide the Services during each Agreed Period. Unless the Service Level Agreement specifies otherwise, those hours will be allocated as agreed in writing between the parties to cover any agreed services in respect of:
 - 2.4.1.** Standard Support and Maintenance on a Use It or Lose It Basis; and
 - 2.4.2.** where applicable, Standard Support and Maintenance and / or Continual Improvement (as required by the Customer) on a Rollover Basis;
 - 2.5.** The Charges payable by the Customer per Agreed Period and the hourly rate(s) at which the Customer can purchase additional hours if required during the Agreed Period;
 - 2.6.** Any service levels applicable to Standard Support and Maintenance.
- 3.** In some cases, where the Customer does not utilise all of the hours allocated to it on a Rollover Basis during an Agreed Period, the Customer may be permitted to carry forward and add such hours that have not been utilised during that Agreed Period to the hours allocated to the Customer for the next Agreed Period. A maximum number of hours allocated on a Rollover Basis can be carried forward by the Customer in this way at any given time, as specified in the Service Level Agreement.
- 4.** If the Customer does not utilise all of the hours allocated to it on a Use It or Lose It Basis during an Agreed Period, such hours that have not been utilised during that Agreed Period will no longer be available to be utilised by the Customer.
- 5.** Any hours allocated to the Customer on a Rollover Basis must be used within such period of time as is agreed in writing by the Supplier, or they will no longer be available to be utilised by the Customer.
- 6.** The Supplier will use reasonable endeavours to provide reports to the Customer in respect of the Service Level Agreement, as follows:
 - 6.1.** Where the Supplier is providing 16 hours or fewer of Services to the Customer per month, reports will be provided on a quarterly basis;
 - 6.2.** Where the Supplier is providing more than 16 hours but less than 30 hours of Services to the Customer per month, reports will be provided on a monthly basis;
 - 6.3.** Where the Supplier is providing 30 hours or more of Services to the Customer per month, reports will be provided on a weekly or fortnightly basis (as set out in the Service Level Agreement);

- 6.4. Where the Supplier and Customer have a bespoke written agreement that is different to any or all of the above points.
 7. If the Customer is close to utilising all of the hours allocated to it within the current Agreed Period, the Supplier will endeavour to promptly alert the Customer of the position and will pause provision of the Services until instructions on how to proceed have been obtained from the Customer.
 8. If the Customer utilises more than their allocated hours during an Agreed Period:
 - 8.1. The Supplier may apply against the additional hours utilised by the Customer any unused hours which are available:
 - 8.1.1. under the Service Level Agreement on a Rollover Basis from previous Agreed Periods; and / or
 - 8.1.2. from a Flexible Package, which can be purchased at any time as detailed in Schedule 2*; and / or
 - 8.2. The Customer may be charged for the additional hours used at the applicable hourly rate(s) specified in the Service Level Agreement.
- *The Supplier would recommend that the Customer covers any additional hours by means of a Flexible Package rather than purchasing additional hours, as this is likely to be more cost effective.
9. The Service Level Agreement may also contain additional terms and conditions which are applicable to the specific Services to be provided to the Customer.

SCHEDULE 2 Flexible Packages

1. The Customer may purchase a Flexible Package at any time by placing an Order with the Supplier. Under a Flexible Package, the Supplier will provide to the Customer such Services as may be requested by the Customer from time to time (up to the number of hours allocated to the Customer under the Flexible Package).
2. Where the Supplier is to provide Services to the Customer under a Flexible Package:
 - 2.1. The Customer may ask the Supplier to provide an estimate of the likely time to be spent by the Supplier in providing specified Services; or
 - 2.2. The parties may agree that, for larger pieces of work, the Supplier and the Customer's nominated project manager should jointly undertake a discovery process to scope out the Services that would need to be provided by the Supplier for a specified task or job and produce and agree a delivery plan for that task or job.

Any time spent by the Supplier in producing a time estimate, undertaking a discovery process and/or producing and agreeing a delivery plan will be deducted from the hours allocated to the Customer (whether under a Flexible package or otherwise).

3. The parties recognise that the Customer's priorities and requirements may change over time or as circumstances develop and it is for the Customer's benefit to ensure flexibility for the Customer in the Services to be provided by the Supplier. While the Supplier will use reasonable efforts to ensure that any time estimate or delivery plan (as applicable) is maintained and updated from time to time, the Customer acknowledges and agrees that:
 - 3.1. Any time estimate provided by the Supplier and approved by the Customer; and / or
 - 3.2. Any delivery plan agreed between the parties,

will not be binding on the Supplier, particularly where the Customer has subsequently changed its requirements or has subsequently given different instructions to the Supplier.

4. The frequency of the reports to be provided by the Supplier in respect of a Flexible Package in accordance with Clause 5 shall be as agreed between the parties from time to time. Where the Customer is also receiving Services under a Service Level Agreement, the Supplier will produce a single report which covers the position under both the Service Level Agreement and the Flexible Package.
5. Both parties shall participate in regular planning sessions or review meetings at least once per quarter (and more regularly if required by the nature of the Services being provided by the Supplier) to:
 - 5.1. Review and discuss the progress of the task(s) or job(s) being undertaken for the Customer by the Supplier; and
 - 5.2. Ensure that sufficient hours have been allocated to the Customer for the Services that are planned to be undertaken by the Supplier for at least the next quarter.
6. Following such a planning session or review meeting, the Supplier shall produce or update the delivery plan which will identify the Services to be provided by the Supplier in the following quarter. In order to be effective, that plan must be agreed by the Customer's authorised representative.
7. When the Order placed by the Customer to purchase a Flexible Package has been accepted by the Supplier, that purchase shall be binding on the Customer and the Charges payable for the Flexible Package shall be non-cancellable and non-refundable. The Supplier may, at its absolute discretion

and subject to reaching agreement with the Customer in relation to the relevant terms, decide to reallocate utilised hours to the Customer and where hours are reallocated in this way:

- 7.1. The reallocated hours would be made available for utilisation by the Customer at the hourly rate specified when the Order was accepted; and
 - 7.2. The Supplier shall be entitled to deduct from the reallocated hours 4 hours to cover the time spent by the Supplier in dealing with and processing the reallocation.
8. Unless expressly agreed in writing between the parties, the Supplier does not offer or guarantee any service levels in respect of the Services to be provided under a Flexible Package.
9. When the hours utilised by the Customer under a Flexible Package reach a level which has been agreed between the parties, the Supplier will alert the Customer of the level reached and the parties will discuss whether the Customer needs to purchase a further Flexible Package or to otherwise top up the hours it has been allocated in order for the Supplier to complete the task(s) and/or job(s) requested by the Customer.
10. If the Customer utilises more than their allocated hours under a Flexible Package:
 - 10.1. The Customer may purchase a further Flexible Package which would be applied (in part or in whole) against the additional hours that have been utilised; and / or
 - 10.2. The Supplier may apply against the additional hours utilised by the Customer any unused hours which are available under a Service Level Agreement; and / or
 - 10.3. The Customer may be charged for the additional hours used at pre-agreed hourly rates.
11. The standard Flexible Packages offered by the Supplier can be purchased for 40, 80, 120 or 200 hours. However, if the Customer requires a higher number of hours this can be negotiated with the Supplier as a custom solution or by stacking multiple standard Flexible Packages to cover the number of hours required.

SCHEDULE 3 Hosting Services

1. The Hosting Services are provided by the Supplier using the WordPress technical system.
2. Hosting Services will be provided via one of the following third party options:
 - 2.1. A “managed” WordPress specialist service such as WPENGINE (<https://wpengine.co.uk/>), Pagely (<https://pagely.com/>) or Kinsta (<https://kinsta.com/>), or such other suitable provider as agreed between the parties; or
 - 2.2. A custom bespoke / dedicated service that is agreed between the parties and can include cloud-based services such as AWS (<https://aws.amazon.com/>) or Azure (<https://azure.microsoft.com/>), or such other suitable provider as agreed between the parties; or
 - 2.3. Enterprise-level custom dedicated servers provided by specific parties which are built and managed by a third-party service provider working in conjunction with the Supplier,

And will be subject to the additional terms and conditions of the relevant provider (which may be amended by the provider from time to time). The Supplier will notify the Customer of the identity of the provider before the Hosting Services commence.

3. The Supplier makes no representation and gives no warranty as to the accuracy or quality of information received by any person via the Server and shall have no liability to the Customer or any third party for any loss or damage to any data stored on the Server.
4. The Supplier reserves the right to remove from the Customer’s website any material which the Supplier considers to be unlawful or inappropriate.
5. The Customer shall keep secure any identification, password and other login details relating to its account and shall notify the Supplier immediately of any known or suspected unauthorised use of the Customer’s account or breach of security, including loss, theft or unauthorised disclosure of the Customer’s password or other security information.
6. The Customer shall comply with the procedures relating to the hosting Services which may be prescribed by the Supplier from time to time and shall make no use of the Server which is detrimental to the Supplier or its other customers.
7. The Charges payable by the Customer for the Hosting Services will be agreed by the parties before commencement of the Hosting Services. The amount of the Charges will depend on:
 - 7.1. The Hosting Services package selected by the Customer; and
 - 7.2. Whether any discount is to be applied if the Customer agrees to make an annual payment in advance for the Hosting Services.
8. The Charges shall be payable on a monthly or yearly basis, as agreed between the Parties.
9. The Customer may terminate the Hosting Services at any time by giving 90 days’ notice in writing to the Supplier. Upon termination of the Hosting Services:
 - 9.1. The Supplier shall provide to the Customer, in digital format, all source materials relating to the website, including the source code for the website, all images, media and video attributed to the website content and a full database backup including all text-based content and settings.

- 9.2. At the request of the Customer and upon agreement between the parties of the applicable Charges, the Supplier can assist the Customer to migrate its website to an alternative service.
10. If the Customer requires the Supplier to provide additional Services in relation to the website hosted by the Supplier, which may include support and maintenance, the Hosting Services and additional services could be included within a Service Level Agreement. Alternatively, if the Customer is dealing directly with a third party provider of hosting services, it can engage the Supplier to support the Customer's Server on the Customer's behalf as part of a Service Level Agreement.

Schedule 4 Processing, personal data and data subjects

1. Role of the parties

Where the Supplier acts as a processor

2. Particulars of the processing

2.1 Scope: For the purpose of providing the Services.

2.2 Nature: For the purpose of providing the Services.

2.3 Purpose of processing: To provide the Services.

2.4 Duration of the processing: For the duration of the Agreement.

2.5 Types of personal data: Supplier may have sight of the following personal data of data subjects if provided access by the Customer:

- Identification data, such as:
 - Date of birth
 - Job title / position
 - Employee number
 - Any national identification number (e.g. passport number, driver's licence number, national insurance number)
 - Telephone number(s)
 - User ID / password
 - Debit /credit card details and bank details
 - Location data
 - IP address
 - Vehicle registration plate number
- Contact data: such as email address, correspondence address.

2.6 Categories of data subject: Representatives, employees or staff of the Customer.