



INDEPENDENT WEBSITE HOSTING AGREEMENT

Parties

- (1) Kameleon Group Limited incorporated and registered in England with Company Number 9079755 whose registered office is at The Workhouse, Brannams Square, Barnstaple EX32 8QB. (**Host**).
- (2) The party whose details are set out in Annex 1 (**Customer**).

Agreed terms

1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this agreement.

Business Day: any day (other than a Saturday or Sunday) when banks are generally open for normal business in London.

Charges: the charges in respect of the Services set out in Schedule 2.

Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

Effective Date: the date set out in Annex 1.

Intellectual Property Rights: all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trademarks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

Materials: the content provided to the Host by the Customer and content produced by the Customer, for incorporation in or on the Site.

Services: the hosting and related services to be provided pursuant to this agreement as described in Schedule 1.

Site: the website to be hosted by the Host pursuant to this agreement, as set out in Annex 1

Termination Date: the date set out in Annex 1



Visitor: a visitor to the Site.

- 1.2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3. References to **content** include any kind of text, information, image, or audio or video material which can be incorporated in a website for access by a visitor to that website.

2. Services

The Host shall, as soon as reasonably practicable after Acceptance, provide the Services in accordance with this agreement.

3. Customer responsibilities

- 3.1. The Customer shall be responsible for the accuracy and completeness of the Materials.
- 3.2. The Host shall not be liable for any delays resulting from the Customer's failure to fulfil any of its obligations. The Host reserves the right to invoice the Customer for any additional expenses reasonably incurred by the Host as a result of such delays.

4. Charges and payment

- 4.1. The Host shall issue VAT invoice(s) in respect of the Charges, and in the manner as detailed in Schedule 2, and the Customer shall pay to the Host the Charges set out in the Host's invoice within the timescales set out in the Host's invoice. Charges to be paid by direct debit.
- 4.2. All Charges are exclusive of VAT.
- 4.3. If the Customer fails to pay any amount payable by it under this agreement, the Host shall be entitled, but not obliged, to charge the Customer interest on the overdue amount. Such interest shall be payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 3% per annum above the base rate for the time being of HSBC Plc. Such interest shall accrue on a daily basis and be compounded quarterly. The Host reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5. Warranties and Limitation of Services

- 5.1. Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.
- 5.2. The Host shall perform the Services with reasonable care and skill.
- 5.3. The Host does not guarantee that the Customer or Visitors will be able to access the Site at any particular time. The Site and the Services are provided on an "as-is, as available" basis. The Customer acknowledges that the need for routine maintenance and error correction may result in down-time and that the Host cannot control the timing or volume of attempts to access the Site. The Host aims to deliver an overall site uptime of 99.5%.
- 5.4. This agreement sets out the full extent of the Host's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the



Services which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

6. Limitation of remedies and liability

- 6.1. Nothing in this agreement shall operate to exclude or limit the Host's liability for:
 - a) death or personal injury caused by its negligence; or
 - b) any 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; or
 - c) fraud; or
 - d) any other liability which cannot be excluded or limited under applicable law
- 6.2. The Host shall not be liable to the Customer for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 6.3. Subject to clause 6.1, the Host's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 150% of the total Charges payable by the Customer to the Host under this agreement in that calendar year.

7. Intellectual property rights

- 7.1. The Customer retains all Intellectual Property Rights in the Material and grants the Host a licence to such Intellectual Property Rights to the extent required pursuant to this agreement.
- 7.2. All Intellectual Property Rights in any works arising in connection with the performance of the Services by the Host (**Works**) shall be the property of the Host, and the Host hereby grants to the Customer a non-exclusive licence to such Intellectual Property Rights to the extent required pursuant to this agreement.
- 7.3. The Customer shall indemnify the Host against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe any Intellectual Property Rights of a third party.

8. Site content

- 8.1. The Customer may update the Site with the Materials. The Customer shall ensure that the Materials 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**).
- 8.2. The Customer acknowledges that the Host has no control over any content placed on the Site by Visitors or the Customer and does not purport to monitor the content of the Site. The Host reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. The Host shall notify the Customer if it becomes aware of any allegation that content on the Site may be Inappropriate Content. If the Customer does not remove in one (1) Business Day any such Inappropriate Content



from the Site, after it has been made so aware by the Host, the Host reserves the right to discontinue the hosting of the Site until such Inappropriate Content has been removed. For the avoidance of doubt, the rights reserved in this clause 8.2 are in additions to the rights detailed in clause 10.

- 8.3. The Customer shall indemnify the Host against all damages, losses and expenses arising as a result of any action or claim that the Materials or any other material posted to, linked to, or included on the Site constitutes Inappropriate Content.

9. Data protection

- 9.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 9.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Host is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Schedule 3 sets out the scope, nature and purpose of processing by the Host, the duration of the processing and the types of personal data as defined in the Data Protection Legislation (Personal Data) and categories of Data Subject.
- 9.3. Without prejudice to the generality of clause 9.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Host for the duration and purposes of this agreement.
- 9.4. Without prejudice to the generality of clause 1.1, the Host shall, in relation to any Personal Data processed in connection with the performance by the Host of its obligations under this agreement:
- a) process that Personal Data only on the written instructions of the Customer unless the Host is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Host to process Personal Data (**Applicable Laws**). Where the Host is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Host shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Host from so notifying the Customer;
 - b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly



assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - I. the Customer or the Host has provided appropriate safeguards in relation to the transfer;
 - II. the data subject has enforceable rights and effective legal remedies;
 - III. the Host complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - IV. the Host complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- h) maintain complete and accurate records and information to demonstrate its compliance with this clause 9.

9.5. Without prejudice to the generality of clause 9.1, the Customer warrants that they shall,

- a) provide clear written and timely instructions to the Host regarding the processing of Personal Data;
- b) ensure that it has in place appropriate technical and organisational measures, [reviewed and approved by the Host], to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it;



- c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- d) assist the Host in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- e) notify the Host without undue delay on becoming aware of a Personal Data breach;
- f) maintain complete and accurate records and information to demonstrate its compliance with this clause 9 [and allow for audits by the Host or the Host's designated auditor]; and
- g) promptly act on advice given by the host or provide a reasonable explanation as to why the advice will not or cannot be followed.

- 9.6. The Customer agrees to indemnify the Host for any losses suffered by the Host as a result of the operation of this agreement or associated regulatory action unless caused by the negligence or default of the Host.
- 9.7. The Customer consents to the Host appointing third party processors listed in Schedule 3 as a third-party processor of Personal Data under this agreement. The Host confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement [substantially on that third party's standard terms of business OR incorporating terms which are substantially similar to those set out in this clause 9].
- 9.8. Either party may, at any time revise this clause 9 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

10. Term and termination

- 10.1. This agreement shall commence on the Effective Date and shall (subject to earlier termination pursuant to this clause 10) terminate automatically on the Termination Date, unless the parties agree in writing to extend the term of this agreement by a further period (such period to be agreed).
- 10.2. Either party may terminate this agreement immediately at any time by written notice to the other party if:
- a) that other party commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or
 - b) that other party:
 - I. ceases to trade (either in whole, or as to any part or division involved in the performance of this agreement); or
 - II. becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or
 - III. a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint



such a person is given or documents relating to such an appointment are filed with any court; or

- IV. the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
- V. any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).

10.3. On termination of this agreement by the Host, all licences granted by the Host under this agreement shall terminate immediately.

10.4. On expiry or termination of this agreement otherwise than on termination by the Host pursuant to clause 10.2 the Host shall promptly return to the Customer all Materials and shall provide to the Customer an electronic copy of the Site (including all content on the Site).

10.5. On expiry or termination of this agreement, all provisions of this agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

11. Force majeure

11.1. The definition in this clause applies in this agreement.

Force Majeure Event: any event arising which is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war).

11.2. A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take reasonable steps to mitigate the effect of the Force Majeure Event.

12. Assignment

Neither party may assign or transfer any of its rights or obligations under this agreement, in whole or in part, without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

13. Entire agreement

Except as set out in this clause 13, neither party shall have any remedy in respect of any untrue statement (whether written or oral) made to it upon which it relied in entering into this agreement (**Misrepresentation**), and neither party shall have any liability other than pursuant to the express terms of this agreement. Nothing in this agreement shall exclude or limit either party's liability for any Misrepresentation made fraudulently. Each party's liability for Misrepresentation as to a fundamental matter, including as to a matter fundamental to that party's ability to perform its obligations under this agreement, shall be subject to the limit set out in clause 6.3

14. Third party rights



This agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.

15. Variation and waiver

- 15.1. A variation of this agreement shall be in writing and signed by or on behalf of both parties to this agreement.
- 15.2. A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.
- 15.3. Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

16. Severance

- 16.1. If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 16.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

17. Governing law and jurisdiction

- 17.1. This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 17.2. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated in Annex 1



Schedule 1 Services

1. Hosting of the Site(s)
2. Hosting of the Domains(s)
4. [Backups of the Site taken nightly and stored for X days (if applicable)]
5. [In the event of server failure, restoration of the Site from latest available data]
6. [Monthly WordPress Core and Plugin Updates (excluding compatibility fixes)]
7. [Acceptance testing following application of Operating System Updates and/or Wordpress Core and Plugin updates]
8. Access to the Site to update contents through Site Software using the HTTPS protocol



Schedule 2 Charges

MANAGED VIRTUAL SERVER MINI

£135 per month - 1 x vCPU, 4GB RAM, 20GB SSD Storage, Monthly OS updates.

MANAGED VIRTUAL SERVER PLUS

£195 per month - 2 x vCPU, 8GB RAM, 40GB SSD Storage, Monthly OS updates.

MANAGED VIRTUAL SERVER MAX

£295 per month - 4 x vCPU, 16GB RAM, 80GB SSD Storage, Monthly OS updates.

MANAGED VIRTUAL SERVER CUSTOM

Priced and specified on request

SUPPORT (INCLUDING DATA RESTORATION DUE TO CUSTOMER / VISITOR ERROR)

£65 for the first hour, £15 for every 15 minutes thereafter

DOMAINS

£1.85 per domain per month

STANDARD DATA SECURITY SUBSCRIPTION (QUARTERLY)

£13.50 per month per website, including managed WordPress Core/Plugin Updates

PREMIUM DATA SECURITY SUBSCRIPTION (QUARTERLY)

£53.50 per month per website, including managed WordPress/Plugin Updates and managed Web Application Firewall.

STANDARD DATA SECURITY SUBSCRIPTION (MONTHLY)

£40.00 per month per website, including managed WordPress Core/Plugin Updates

PREMIUM DATA SECURITY SUBSCRIPTION (MONTHLY)

£80.00 per month per website, including managed WordPress/Plugin Updates and managed Web Application Firewall.

* If the Customer exceeds the data storage and/or data traffic limits as governed by its Band Tariff (as detailed in Annex 1 (or as varied pursuant to this clause), and with the limits as set out above) for a total of 3 months in any 6 month period the Host reserves the right to move the Customer to a higher Band Tariff based on the Customer's usage during that 3 month period (and the Customer agrees to this Agreement being so varied)



Schedule 3 Processing, Personal Data and Data Subjects

Processing by the Provider

Likely Scope & Nature of Processing:

1. Storage of personal data in an online database
2. Sending of emails to the customer and their customer to facilitate communication and enquiry or sale progression
3. Passing personal data to a third-party payment provider who the customer holds an account with
4. Passing personal data to a third-party data processor or CRM provider who the customer holds an account with
5. Processing of personal data for the purposes of de-bugging the hosted services on request by the customer

Potential Purposes of Processing:

1. To provide personalised content to the user on a hosted website
2. To provide to the customer enquiry data submitted via webforms to allow the customer to process enquiries
3. To provide to the customer sales data submitted via webforms to allow the customer to process web-based sales

Duration of the processing:

1. For the duration of the contract as per the customer's instructions

Types & Categories of Personal Data

1. Personal Data including Special Category Data

Third Party Processors

The following list excludes any third-party data processors for which the customer holds an account directly.

1. ANS Group Limited (Previously UKFast.net Limited)
2. Mailgun
3. Microsoft
4. Cloudflare

Annex 1

Customer:

Company Number:

Effective Date:**Termination Date:**

Site(s) (Band Tariff):

Domain(s):

Other Service(s):

Monthly Charge:

Signed for and on behalf of the Host
Please Print Name

Signed for and on behalf of the Customer
Please Print Name

Agreement Date	Host

Agreement Date	Customer