



ClerksWell

Proposed Form of Agreement

Website Support and Development Services

Date: TBC

Agreement for Services

Date:

Parties:

- 1. **ClerksWell Limited** of 310 Metal Box Factory, 30 Great Guildford Street, London, SE1 0HS, company number 07905188 ("**ClerksWell**");
- 2. [] of [] and whose company registration number is [] ("**the Client**").

ClerksWell agrees to provide the Client with Umbraco Support and Development Services as set out in the attached Terms and Conditions and respective Statement(s) of Work. The Client agrees to accept and pay for the Services, on the basis of the attached Terms and Conditions.

SIGNED by

Name

Position.....

For and on behalf of

ClerksWell Limited

SIGNED by

Name

Position.....

For and on behalf of the Client

Terms and Conditions

1. Commencement and Duration

- 1.1 The Services governed by this contract will commence on XXXXXX and will be for an initial term of 1 year, with extension options (at The Client's sole discretion) for any number of periods up to a total possible maximum aggregate term of 5 years.

2. Scope of Services

- 2.1 ClerksWell agrees to provide Umbraco Support and Development Services to the Client.
- 2.2 The Services will be defined, priced and delivered to a programme detailed in the Strategic Retainer Agreement.
- 2.3 ClerksWell shall supply the Services in the manner detailed in the SOWs in accordance with the terms of this Agreement, which shall apply to the exclusion of any standard, purchase order, acknowledgement or other terms and conditions.
- 2.4 The terms set out in the main body of this Agreement will supplement and complement the terms set out within the SOWs. However, in the event of any conflict or discrepancy between the provisions set out in the main body of this Agreement and the Strategic Retainer Agreement, this Agreement will prevail. ClerksWell endeavour to work with Client as necessary to remove such conflict or discrepancy.
- 2.5 ClerksWell shall use its best efforts to provide the Services in accordance with the Programme as set out in the SOWs.
- 2.6 The Client acknowledges that ClerksWell's ability to provide the Services is dependent upon the full and timely cooperation of the Client and any third party nominated by the Client, as well as the accuracy and completeness of any specifications, information and data to be provided by the Client or any such third party. Any delay on the part of the Client in supplying information, materials, approvals and assistance to ClerksWell shall entitle ClerksWell to revise the Programme and extend the period of delivery of the Services by a period equal to the Client's or any such third party's delay, where such delay materially impacts upon ClerksWell's ability to provide the Services.
- 2.7 Where phased sign-off is required by the parties, this shall be specified in the SOWs.
- 2.8 Any unreasonable delays in returning any sign-off and any unavoidable delay by the Client in keeping to any deadlines will affect subsequent deadlines and thus the delivery date. ClerksWell may incur extra costs as a result of these delays, which may be charged to the Client. The Client will notify ClerksWell of any dates to be avoided for project sign-offs as far as possible in advance and these dates must then not be used.
- 2.9 If in the course of providing the Services it becomes apparent that for technical or other reasons not reasonably foreseeable at the time the Contract was entered into, it will not be possible for the Services to be completed within the Programme without significant extra resources, or that the costs of providing the Services will materially exceed those contemplated at that time, ClerksWell shall be entitled to request a review of the Programme and/or the charges for the Services, as appropriate, within a reasonable timeframe.

3. Duties of the Contractor

- 3.1 The Contractor shall exercise all reasonable skill, care and diligence in the discharge of all duties to be performed by it and all Services shall be provided to the satisfaction of the Client.
- 3.2 Where ClerksWell indicates in any SOWs that any part of the Services is to be provided by one or more named individuals, ClerksWell shall use its best endeavours to ensure that those individuals are available for the purposes of providing the Services, but if for any reason any of them becomes unavailable for those purposes, ClerksWell shall be entitled, without any liability to the Client, to arrange for another equally qualified individual to provide the part of the Services in question at no extra cost to the Client.
- 3.3 The Contractor's personnel and any personnel engaged to perform the Services through a sub-contract or otherwise whilst carrying out the Services shall conduct themselves in strict accordance with the requirements of the client's policies, as amended from time to time.
- 3.4 ClerksWell's personnel and any personnel engaged to perform the Services through a sub-contract or otherwise whilst carrying out the Services shall be paid at least the National Living Wage.
- 3.5 ClerksWell and its employees shall act in a way that upholds the Client's good name and reputation at all times and so as not to do or attempt to do any act or thing which is intended to cause, or which in fact causes, any damage to or brings discredit upon the Client.
- 3.6 ClerksWell represents, warrants and undertakes that neither the company nor its employees or agents or sub-consultants or others performing services in relation to the Services has done (or agreed to do) or does (or agree to do) anything which constitutes an offence or a breach by it and/or any of them of any applicable law relating to bribery.
- 3.7 ClerksWell shall comply with any conflicts of interest, anti-fraud, corruption and bribery policies provided by the Client from time to time.

4. Statutory and Other Regulations Fine

- 4.1 ClerksWell shall comply in all respects with the law and all applicable rules and regulations in all matters arising in the performance of or in connection with this Agreement.

5. Data Protection

- 5.1 For the purpose of this clause, "controller", "processor", "personal data", and "processing" all have the meanings as defined in the UK Data Protection Act 2018.
- 5.2 If ClerksWell processes personal data supplied by or on behalf of the Client as part of the provision of the Services, it acknowledges that the Client is the controller and ClerksWell is a processor in respect of that personal data. ClerksWell must contact the Client immediately if it considers that it is also a data controller in respect of that data or (to the extent that you are permitted by law to do so) if the law requires ClerksWell to process personal data otherwise than in accordance with this clause 5.
- 5.3 The Client and ClerksWell shall each comply fully with all applicable requirements of data protection legislation in force at any time.
- 5.4 In addition, in processing personal data for the purpose of this Agreement, ClerksWell shall:

- 5.4.1 process personal data only in accordance with The Client's written instructions;
 - 5.4.2 ensure that any persons who have access to or otherwise process personal data are obliged to keep that data confidential and only have such access as is strictly necessary for the performance of their duties;
 - 5.4.3 take reasonable steps to ensure the reliability of such persons and that they have been adequately trained in data protection law and practice;
 - 5.4.4 have in place appropriate technical and organisational measures (assessed and updated from time to time) to protect against unauthorised or unlawful processing and accidental loss of, or damage to, personal data;
 - 5.4.5 not transfer personal data outside of the European Economic Area without obtaining the Client's written consent;
 - 5.4.6 provide the Client with reasonable assistance and cooperation in meeting our obligations to respond to requests from data subjects to exercise their rights, keep personal data secure, notify breaches to the Information Commissioner, advise data subjects of breaches, carry out data protection impact assessments and consult with the Information Commissioner about such assessments;
 - 5.4.7 delete or return to the Client any personal data on the termination of the contract;
 - 5.4.8 provide the Client with all information in ClerksWell's possession to demonstrate that both ClerksWell and the Client have complied with their obligations under article 28 of the General Data Protection Regulation;
 - 5.4.9 submit and contribute to audits and inspections carried out by the Client or its nominated auditor to evaluate compliance with data protection legislation;
 - 5.4.10 notify the Client immediately if the Contractor thinks that the Client has issued an instruction which does not comply with data protection legislation;
 - 5.4.11 promptly (and in any event within 24 hours) notify the Client if any personal data is lost, destroyed or damaged. The notification must describe the nature of the data breach including the categories and approximate number of data subjects concerned and the categories of personal data records concerned;
 - 5.4.12 promptly refer to the Client any request, complaint, notice or communication from a data subject or from the Information Commissioner or other regulatory or supervisory body and ClerksWell shall not (unless required by law) itself respond to any such request; and
 - 5.4.13 keep written records of the processing activities ClerksWell carries out on behalf of the Client as required by article 30 of the General Data Protection Regulation.
- 5.5 ClerksWell shall indemnify the Client against any loss or damage suffered by the Client in relation to any breach by ClerksWell of its obligations under this clause 5.

6. Termination

- 6.1 Without prejudice to any other remedies:

- 6.1.1 the Client may terminate this Agreement for any reason by giving ClerksWell three calendar months' notice in writing.
- 6.1.2 ClerksWell may terminate this Agreement for any reason by giving the Client three calendar months' notice in writing.
- 6.1.3 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect without notice if:
- 6.1.4 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 6.1.5 the other party repeatedly breaches any of the terms of this 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 this Agreement;
- 6.1.6 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 6.1.7 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 any of its creditors 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;
- 6.1.8 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 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;
- 6.1.9 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;
- 6.1.10 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 6.1.11 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 6.1.12 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 the other party's assets and such attachment or process is not discharged within 14 days;
- 6.1.13 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 6.1.3 to clause 6.1.11 (inclusive);
- 6.1.14 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

- 6.1.15 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 6.2 For the purposes of clause 6.1.3, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 6.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 6.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 6.5 The Contractor acknowledges that this Contract shall survive in the event that any "special administration order" is made in respect of the Client (as defined in section 23 of the Water Industry Act 1991 as amended).
- 6.6 In the event of the special administration of the Client as defined in paragraph above, the special administrator shall have the right to administer this Contract and to transfer this Contract to another contracting body including potentially an entity owned or controlled or partly owned or controlled by the government or other public entity.

7. Force Majeure

- 7.1 Neither party shall be liable for any failure to perform or delay in performance of any of its obligations under this Agreement caused by any circumstance beyond the reasonable control of that party including Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, acts of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, and embargo (a **"Force Majeure Event"**).
- 7.2 The party claiming the Force Majeure Event shall promptly notify the other party in writing of its reasons for the delay or stoppage and its likely duration and shall take all reasonable steps to overcome the delay or stoppage.
- 7.3 If the party claiming the Force Majeure Event has complied with this clause 7, its performance under this Agreement shall be suspended for the period that the Force Majeure Event continues and the party will have a reasonable extension of time for the performance of its obligations given all the circumstances. As regards the delay or stoppage arising from the Force Majeure Event:
- 7.3.1 any costs arising from such delay or stoppage shall be borne by the party incurring those costs;
- 7.3.2 the party claiming the Force Majeure Event shall take all reasonable steps necessary to bring that event to a close or to find a solution by which its obligations under this Agreement may be performed despite the Force Majeure Event; and

- 7.3.3 if the Force Majeure Event continues for more than 30 consecutive days, the Client may terminate this Agreement with immediate effect on giving written notice to the other party and the Client shall not be liable to the other for such termination.

8. Confidentiality

- 8.1 ClerksWell shall not make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed) except as required by applicable law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange) or by any court or other authority of competent jurisdiction. The Contractor shall not make use of the Client's name or any information acquired through its dealings with the Client for publicity or marketing purposes without the prior written consent of the Client
- 8.2 Each party undertakes that it shall not at any time disclose to any person any confidential information in any form (including in written, oral, visual or electronic form or on any magnetic or optical disk or memory or wherever located) concerning the business, technical knowhow, affairs, customers, clients or suppliers of the other party, or of any of the other party's contractors, customers, agents, distributors, shareholders, managers or business contacts, except as permitted by clause 8.2.
- 8.3 Each party may disclose the other party's confidential information:
- 8.3.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 8; and
- 8.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.4 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 8.5 The provisions of this clause 8 shall continue to apply after termination or expiry of this Agreement.

9. Indemnity and Insurance

- 9.1 ClerksWell shall indemnify the Client against all damages, losses and expenses incurred by the Client arising out of any claim that any development, software or other content provided by ClerksWell in connection with the provision of the Services is unlawful or infringes the intellectual property or other rights of any third party.
- 9.2 The Client shall indemnify ClerksWell against all damages, losses and expenses incurred by ClerksWell arising out of any claim that any development or other content provided by the Client in connection with the provision by ClerksWell of the Services is unlawful or infringes the intellectual property or other rights of any third party, or any other claim arising out of or in connection with any such development or other content.
- 9.3 On the termination of the Contract for any reason, and without limiting any right of either party, the Client shall be liable to pay a proportionate part of the charges for the Services up to the date of termination, and any accrued charges for the Services shall be payable immediately. If ClerksWell terminates the Contract where not entitled to do so, it shall

indemnify the Client for any and all costs thereby incurred by the Client and shall return any and all charges collected by ClerksWell in relation to any work not completed at the time of termination.

9.4 ClerksWell will effect and maintain for the period of this Agreement an insurance policy or policies with a reputable insurance company for such sums as the Client considers to be adequate, but in any event for not less than £5,000,000 (five million pounds sterling) for any one incident and which shall cover the indemnity set out above and ClerksWell shall produce to the Client on demand evidence of the policy and/or a form of a certificate prepared by the insurance providers.

9.5 The provisions of this clause 9 shall continue to apply after termination or expiry of this Agreement.

10. Limitation of Liability

10.1 Nothing in this Agreement:

10.1.1 shall limit any liability of either party which cannot legally be limited, including:

10.1.1.1 personal injury or death caused by negligence,

10.1.1.2 fraud or fraudulent misrepresentation; and

10.1.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;

10.1.2 shall limit ClerksWell's liability under clause 5 (data protection) and 11 (intellectual property rights).

10.2 The Client's total liability to the Contractor, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to 100% of the total charges paid by the Client under this Agreement.

10.3 Notwithstanding the provisions of the Agreement, the liability of ClerksWell in respect of all claims, damages or other costs or expenses arising from the performance of the work shall not exceed in excess of 100% of the total charges paid or payable under this Agreement.

10.4 The liability under paragraph 10.3 shall not apply to any error or defect in or lack of functionality of the deliverables which is due to any change made to them otherwise than by ClerksWell (or with ClerksWell's permission or knowledge), and shall cease to apply if the Client makes any change to the source code in respect of the deliverables.

11. Intellectual Property Rights

11.1 Copyright and all other intellectual property rights in any deliverables produced in the course of the Services including any software produced by ClerksWell for the Client ("Foreground Rights") shall initially vest in ClerksWell, but once ClerksWell has received payment in full for the Services, ClerksWell shall assign such Foreground Rights to the Client.

11.2 All copyright and other intellectual property rights in any software and other technology owned or licensed by ClerksWell and used to produce the Services ("Background Rights") shall remain vested in ClerksWell, but once ClerksWell has received payment in full of ClerksWell's charges for the Services, ClerksWell shall grant the Client (and any relevant third parties) a perpetual, royalty-free, non-exclusive license in respect of such Background Rights (in the case of software, and unless otherwise agreed in writing with ClerksWell, in object code form only) for the purposes set out in the Strategic Retainer Agreement.

- 11.3 ClerksWell warrants that any work or materials provided by the ClerksWell or any sub-Contractor to the Client and its use by the Client shall not infringe any Intellectual Property Rights or moral rights of any third party.
- 11.4 ClerksWell shall indemnify and keep indemnified the Client against all loss, damage, costs and expenses for which the Client is or becomes liable as a result of any infringement or alleged infringement by ClerksWell of any third party's Intellectual Property Rights.

12. Knowledge Sharing

- 12.1 ClerksWell shall, free of charge, disclose to the Client and allow the Client and/or those nominated by the Client to inspect and take away copies of all information relating to the Services and the Contractor's obligations under the Contract (including, without prejudice to the generality of the foregoing, accounts and records) as the Client shall require in order to satisfy itself that the provisions of the Contract are being observed and performed, and/or in order to facilitate the operation of the Contract, and the Contractor shall provide all reasonable assistance required by the Client and/or those nominated by the Client in order to obtain such information and shall ensure that the Client and/or those nominated by the Client have full and free access (including access to the Contractor's premises) and licence to use such information in order to facilitate the operation of this provision, but the Contractor shall not be obliged to supply any information which would be treated as privileged in any proceedings.
- 12.2 The Client shall provide ClerksWell with access to, and use of, all information, data and documentation reasonably required by ClerksWell for the performance of its obligations under the Contract, and shall be responsible for the accuracy and completeness of all such information, data and documentation.
- 12.3 The Client warrants that all materials provided by the Client for use in connection with the Services comply with all applicable laws and do not infringe any third-party rights.

13. Assignment and Sub-Contracting

- 13.1 ClerksWell does not intend to sub-contract the Services to the Client.
- 13.2 Should this change, ClerksWell shall not sub-contract, transfer or assign the whole or any part of this Agreement without the prior written consent of The Client, whose consent may be subject to such terms and conditions as the Client may see fit to impose.
- 13.3 ClerksWell shall be responsible for the acts and omissions of its sub-contractors as though they were its own.

14. Charges

- 14.1 The total cost for delivery of the Services will be defined in each Strategic Retainer Agreement.
- 14.2 The Client shall pay ClerksWell the charges for the Services set out or referred to in the Strategic Retainer Agreement. All charges payable for the Services are exclusive of VAT, which will be chargeable in accordance with legislation current at the date of invoice.
- 14.3 Unless disputed, payment of all charges due must be made thirty (30) days from the date on which the relevant invoice is provided. Failure to effect payment when due may result in suspension of the Services without prejudice to any other remedy which ClerksWell may have.
- 14.4 Payment Terms will be discussed in the Strategic Retainer Agreement

15. Rights of Third Parties

A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available other than pursuant to that act.

16. Governing Law and Jurisdiction

This Agreement shall be governed and construed in all respects by English Law and the parties to it irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

17. Announcements

17.1 ClerksWell shall not make or permit any person to make, any public announcement concerning this Contract without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed) except as required by applicable law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange) or by any court or other authority of competent jurisdiction. The Contractor shall not make use of the Client's name or any information acquired through its dealings with the Client for publicity or marketing purposes without the prior written consent of the Client.

17.2 Each party will at all times keep confidential and will not copy, reproduce, publish, disseminate or otherwise disclose, without the prior written consent of the other, any business, systems or other confidential information of the other party (including but not limited to any non-public information of that other party relating to its software, data, systems, trade secrets, product plans, designs, ideas, concepts, costs, prices, finances, marketing plans, business opportunities, research and development and other know how) or the terms of the Contract or use any such information other than for the purposes contemplated by the Contract (except that each party may disclose such information to those of its employees, agents and permitted sub-contractors who need to know the same for the purposes of the Contract or to any such party to whom it may be required by law to do so or to a regulatory authority).

18. Mediation

The parties agree that any dispute or difference arising in relation to the Contract shall be referred to mediation in accordance with the model procedure of the Centre for Dispute Resolution, or failing that shall be determined by arbitration in London by a single arbitrator appointed in default of agreement by the President of the British Computer Society.

19. Entire Agreement Clause

19.1 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.

19.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

19.3 Each of these Terms and Conditions shall be read and construed independently of each other so that if one more is held to be invalid as an unreasonable restraint of trade, or for any other reason whatsoever, then the remaining Terms and Conditions shall be valid to the extent they are not held to be so invalid.

20. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. Severance

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

22. No partnership or agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.