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G-Cloud 14 - Terms & Conditions, 2024

Cloud-based support services and consultancy

1. DEFINITIONS

In this Agreement the following words and expressions have the following meanings:

"Additional Functionality"	means any functionality not implemented in the Software at the time this contract is signed
"Agreement"	means this Agreement between the Service Provider and the Client including all specifications, plans, drawings and other documents referred to in this Agreement or attached hereto which may be or are agreed by the parties to form part of this Agreement
"BAU"	Means the day-to-day software and software development activities that constitute business as usual for the Client's day-to-day general operation
"Bespoke Code"	means the source code of the Software specifically written for the Client by the Service Provider or a Third-Party Supplier, as defined within the Project Scope section of this Agreement.
"Client Content"	means all material placed in the CMS (where configured) or within the Software
"CMS"	means an Open Source software programme known as the "Content Management System" which may or may not have been configured by the Service Provider to manage content within the Software
"Downtime"	meaning the amount of time that access to, or operability of, the Software is widely unavailable
"Force Majeure Event"	means any event beyond the reasonable control of a party including, without limitation, strikes, lock-outs and/or labour disputes (except those involving the workforce of the parties), acts of God, war, riot, civil commotion, global pandemic, malicious damage, overriding emergency procedures, fire, flood or storm but not the failure of a party's agents or contractors
"Hosting"	means the hosting of the Software on web server(s) as specified in clause 3: Project Scope and defined in clause 6 Hosting Services
"Incident"	means an event affecting any of the Client Software covered by this Agreement as defined in the Project Scope clause of this Agreement
"Incident Logging"	means the action of logging of an Incident either through: emailing the Service Provider at support@totallycommunications.com; or calling the Service Providers support line; or online via http://support.totallycommunications.com; these contact details may change from time to time, and the Client will be notified of any such changes
"Live"	means intended to be accessed by the public or the Client, rather than used for testing / staging
"Maintenance & Support Agreement"	means this contract
"Open Source"	Open Source software is software that can be freely used, changed, and shared (in modified or unmodified form) by anyone, and is normally available under a separate GPL Licence
"Project"	means the maintenance and support of the CMS (where configured) and Software as defined by the "Project Scope" section of this agreement
"Representative"	is the person designated by the Client and Service Provider to manage terms of this Agreement on their behalf
"Resolution"	means the Service Provider providing a reasonable workaround or solution to the Incident and for the avoidance of doubt, the time for Resolution starts at the end of the Response time.
"Response"	means The Service Provider acknowledging the Incident usually by providing a reference number either electronically or verbally to the Client
"Services"	means, Maintenance and Support services as defined within the Project Scope section of this Agreement and any Ancillary Services (as defined in section 4 of this agreement) required to deliver the Project.
"Senior Developer Level"	means the quality and complexity of work that would typically be carried out by one of the Service Providers senior, experienced & capable developers.
"Service Providers Standard Daily Rate"	means the cost for one day of technical-related activity supplied by the Service Provider. The current rate at the time of this contract is £750+VAT per day; the Service Provider reserves the right to alter this rate; and will notify the Client.
"Software"	refers to any Bespoke Software written for the Client or any other software implemented for the Client by the Service Provider or by a Third-Party Supplier that is covered under this Agreement
"Software Licence"	means the annual licence granted by the Service Provider to the Client for the right to use the CMS (where configured) insofar as relevant copyright is owned by the Service Provider
"Staging"	means not intended to be accessed by the public, but intended to be used for testing, development and training purposes.
"Super Users"	means persons nominated by the Client's Representative as key users of the Software.
"System"	means the Software.
"Third-Party Supplier"	means another provider of software or services, not the Service Provider
"Bespoke Software"	means the software system development(s) created by the Service Provider or a Third-Party Supplier for the Client under a separate software development contract; the bespoke software development(s) are defined within the Project Scope section of this Agreement.
"Work As Intended"	means a fully functioning system implemented prior to this Agreement.

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2.   PROJECT SCOPE

2.1   The Project Scope is the Support and BAU activities of the Clients Software system(s) developed either by the Service Provider for the Client under separate software development Agreement(s) or developed by Third-Party Supplier(s) for the Client under separate software development Agreement(s); details of the specific software system(s) covered by this Agreement are listed in Appendix A.

2.2   The Server Maintenance element of this Agreement will cover all reasonable Service Provider resources to maintain operability of the hosting platform that the system(s) outlined in Appendix A, to run under normal usage.

2.3   The Service Provider BAU resource days under this Agreement allocated each month to cover Maintenance, Support and BAU activities is 8 (eight) and will be made up of: Developers, Project Managers, Designers and QA resources

2.4   Support and BAU activities are exclusively for the Software system(s) outlined in Appendix A, and not for any other software, system or hardware used by the Client.

2.5   BAU resource days under this Agreement will be allocated to mainly cover application support, with any unused days being allocated to BAU change request activities.

2.6   BAU resource request process:
- The Client will log support requests along with a Client Priority, calculated against the Urgency and Impact as defined within Section 12 of this Agreement
- The Client will log BAU change requests, along with a Client recommended relative priority to any other logged BAU change requests
- Only support and BAU change requests logged by the Client's representative (or designee) will be eligible for BAU activities
- The Service Provider will assign an estimated BAU resource requirement to each logged BAU change request within a reasonable timeframe

2.7   BAU resource allocation and delivery process:
- The Service Provider will constantly review (and will be alerted to) any Client logged support requests
- Each Client logged support request will be reviewed and validated against the Urgency and Impact criteria set out within Section 12 of this agreement to confirm or adjust the support request priority
- The SLA for each priority of support requests are outlined within Section 12 of this Agreement; unless directed otherwise in writing by the Client, the Service Provider will respond to each support request within the defined SLA
- Whenever BAU support requests do not take priority, the Service Provider shall work on BAU change requests in the order that is set by the Client (in Section 3.6)
- During any month, the Client can log additional BAU change requests.
- At any time during a month, the Client can re-prioritise which BAU change requests that the Service Provider should work on; this can cover BAU requests made prior to the month as well as new BAU change requests logged during a month.
- To ensure the Service Provider has sufficient BAU activities to deliver the full BAU resource allocation each month, it is incumbent on the Client, a minimum of 7 days prior to each month commencement, to log BAU change requests and set priorities for the following month's BAU Change request activities
- In instances where the number of BAU resource days within any month are insufficient for the Service Provider to address all BAU support requests and logged BAU change requests, the Service Provider will discuss with the Client:
  - If BAU support requests need to take priority over BAU change requests resulting in potential delivery delays of BAU change requests
  - OR additional BAU support days need to be purchased at the rate of £800+VAT per day; subject to Service Provider resource availability

2.8   Any unused BAU resource days at the end of any month can be rolled over to the following month at sole discretion of the Service Provider.

2.9   Following the adoption of this Agreement, only changes to the Project Scope agreed in writing by the Representatives of both parties, will constitute a part of this Agreement.

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2.10   The Software will be hosted on the Client's own hosting platform(s), with the entire responsibility of this hosting environment and its operability ceded to The Service Provider. The Client will be responsible for all costs incurred through this hosting. This option is outlined in Section 6, with Option 6.1.3 being selected.

2.11   Other Open Source or 3rd party software may be configured within the Software which may be subject to its own licence or GPL which the Client will be responsible to adhere to. The Service Provider will advise the client where the use of such software is planned or required so that any licence impact can be evaluated and accepted.

3.   **ANCILLARY SERVICES**

3.1   The Service Provider agrees to provide design services, Bespoke Code changes or additions to any software system(s) if required by the Client, subject to Clause 4.2. However, this would be provided by the Service Provider on a commercial basis under a separate software development contract, statement of work or quote outside of this Agreement and charged by the Service Provider at the Service Providers Standard Daily Rate.

3.2   If any of the Software supported under this Agreement was not developed by the Service Provider as defined within the Project Scope, or if the Software developed by the Service Provider and supported under this Agreement was further developed or altered in any way by either a Third-Party Supplier or by the Client without the express agreement from the Service Provider, the Client acknowledges:

3.2.1   The Service Provider will use reasonable endeavours to support the Software, however the Service Provider cannot be held responsible in any way for Software failure or downtime that is caused by inherent faults in any underlying Software not created or modified by the Service Provider, and will do its reasonable endeavours to adhere to the Service Levels as set out in this Agreement.

3.2.2   Each Client requested change to any of the Software will be assessed by the Service Provider who will use its best endeavours facilitate these changes; however, where the requested changes are deemed by the Service Provider to be a potential threat to the future stability or operability of the Software, the Client agrees to work with the Service Provider to agree alternative software changes to achieve the Client's required outcome where possible. The Client acknowledges that the assessment and any subsequent related activities undertaken by the Service Provider will be charged by the Service Provider at the Service Providers Standard Daily Rate

3.3   If the Software supported under this Agreement was further developed or altered in any way by either a Third-Party Supplier or by the Client, without the express agreement from the Service Provider, notwithstanding clause 4.2, the Client acknowledges The Service Provider has a right to terminate this Agreement with immediate effect.

3.4   Where a support request, not caused by any Service Provider action, requires a response from the Service Provider, the Service Provider will notify the Client, and reserves the right to charge for any reasonable amount of time spent resolving the support request.

3.5   Unless explicitly stated within this Agreement, the Service Provider is under no obligation to provide any additional ancillary services to the Client over and above the items stated in Section 3 & Section 4 of this document; these additional services include but are not limited to:

- data conversion activities
- documentation / manuals
- Disaster-Recovery & Business Continuity Planning and execution
- data encryption
- external penetration testing

4.   **PAYMENT SCHEDULE**

4.1   All invoices will be submitted in advance and will require full payment ahead of any Services being provided by the Service Provider under this Agreement.

5.   **HOSTING SERVICES**

5.1   The Live Bespoke Software will be hosted on one of the following platforms, and will be identified in the Project Scope section of this Agreement:

5.1.1   the Client's own Hosting platform, or a Hosting platform provided by a Third-Party Supplier retained by the Client under a separate non-related agreement to this Agreement, with the entire responsibility of this Hosting environment and its operability remaining with the Client. The Client will be responsible for all costs incurred through this hosting; or

5.1.2   the Service Providers shared virtual Hosting platform. Costs for this option will be included within the Project Fee; or

5.1.3   the Client's own hosting platform, with the entire responsibility of this hosting environment and its operability ceded to The Service Provider. The Client will be responsible for all costs incurred through this hosting.

5.2   When option 6.1.1 is selected by the Client, the Service Provider will not be responsible for any activities relating to Hosting; inclusive of Backup and Disaster / Recovery services unless otherwise explicitly stated within the Project Scope section of this Agreement.

5.3   When option 6.1.2 is selected by the Client:

5.3.1   the Service Provider retains responsibility for selecting appropriate infrastructure and services from the Service Providers own resources, or those of trusted partners;

5.3.2   the Client agrees the Service Provider may, at their own cost, use alternative infrastructure and services as a temporary hosting solution in overcoming Downtime related issues;

5.3.3   the Service Provider at its sole discretion can deem that Bespoke Software usage is excessive for the Service Providers shared virtual hosting platform; the Service Provider may choose to upgrade to a dedicated virtual server, which will incur additional direct costs, which will be passed on to the Client for payment. This will be highlighted to the Client as and when this requirement arises, and can be put in place temporarily if required.

5.4   When 6.1.2 or 6.1.3 option is selected by the Client:

5.4.1   the Service Provider does not warrant that the Hosting environment or the server on which the Bespoke Software is hosted on will be continuously available, but will use its reasonable endeavours to keep Downtime to a minimum. However the Service Provider shall not be responsible for any Downtime caused by any Third-Party Supplier or Internet Service Provider or the Client;

5.4.2   where Downtime has been caused by the Client, or the Client's actions or by the non-normal use of any of the Bespoke Software as it was intended, the Service Provider should be entitled to charge the Client for any and all time spent investigating and rectifying the problem at the Service Providers standard support charge out rate in effect at that time;

5.4.3   the Service Provider shall use its reasonable endeavours to ensure that any scheduled Downtime at the behest of the Service Provider or the Client is incurred outside of the site's peak usage times and is agreed in advance and in writing with Client's Representative;

6.   **APPLICATION OF TERMS AND COMMENCEMENT**

6.1   This Agreement shall apply to all dealings between the Client and Service Provider in regards to the scope of this Agreement for the specified length of this Agreement, unless specifically varied in writing and signed by the Client Representative and Service Provider Representative.

6.2   The date of commencement of this Agreement shall be the date as defined in Clause 1 of this Agreement.

7.   **DATA & BESPOKE CODE BACKUP, DISASTER / RECOVERY & BUSINESS CONTINUITY PLAN**

7.1   Data Backup; when option 6.1.2 or 6.1.3 is selected by the Client:

7.1.1   During the term of this Agreement, the Service Provider shall create daily back-up copies of the Client's Bespoke Software and associated data and hold each of these back-ups for a period of twenty-one days.

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The Service Provider can arrange for copies of each backup taken to be sent through to the Client or to a Third-Party Supplier on a daily basis. Monthly back-ups will also be created by the Service Provider available and held for a period of three months.

7.1.2   The Service Provider does not warrant the accuracy or completeness of any back-up copies of the Bespoke Software kept by the Service Provider although the Service Provider agrees to use its best endeavours to ensure any such back-up copies are accurate and complete.

7.1.3   The Service Provider encourages the Client to periodically verify that any back-up copies taken are accurate and complete. The Service Provider can help the Client facilitate this activity at the request of the Client.

7.2   Bespoke Code Backup

7.2.1   The Service Provider will conform to current best practice in respect of the retention of copies of all of the Bespoke Code for the duration of this Agreement.

7.3   Disaster / Recovery and Business Continuity Plans

7.3.1   Where specified, Data and Bespoke Code back-ups will be taken by the Service Provider under this agreement; however, this does not constitute a Disaster / Recovery plan or a Business Continuity plan. At the request of the Client, the Service Provider can work with the Client to help define a Disaster / Recovery plan or a Business Continuity Plan. This activity may incur additional charges at the Service Providers Standard Daily Rate.

8.   STAGING & TESTING ENVIRONMENTS

8.1   A Staging version of the Bespoke Software will be hosted by the Service Provider, on a Hosting platform chosen by Service Provider. The Service Provider will be responsible for all costs relating to this hosting. This Staging environment is for the Service Provider and the Client to test any of the Bespoke Software. Other testing environments may be made available by the Service Provider as required.

8.2   The Service Provider will manage the hosting of the Staging environment and other testing environments and use its reasonable endeavours to keep Downtime to a minimum. However, the Service Provider shall not be responsible for any Downtime caused by a Third-Party Supplier or an Internet Service Provider.

9.   WEB BROWSER SUPPORT

9.1   Totally will ensure compatibility with all modern web and mobile browsers and versions where:

9.1.1   the web browser version is a stable release and less than 4 years old

9.1.2   the web browser is still supported by its vendor / creator

9.2   Totally will apply reasonable endeavours to provide graceful degradation for all other web browsers / versions however this may incur an additional cost which will be agreed in advance by both parties.

9.3   If the Service Provider introduces new features or makes changes to aly of the Bespoke Software under the terms of this Agreement, compatibility with older browsers will be subject to the terms outlined in 10.1 at the time the new features or changes are made to any of the Bespoke Software.

10.   DATA ACCESS AND DATA SECURITY

10.1   For any of the Bespoke Software that holds personal data, in order to limit the possibility of a data security breach; as part of this Agreement, the Service Provider will;

10.1.1   Apply all server security patches automatically on a nightly (or alternative scheduled) basis.

10.1.2   Monitor and control access to Clients live servers:

10.1.2.1   There will be restricted access to the Client's live servers by the Service Provider

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10.1.2.2   There will be a Service Provider Devops team made up of the Chief Technical Officer and a Senior Technical Architect who will be responsible for setting up and configuring all Clients live servers. Only the Service Providers Devops team will be able to run commands as root on the server

10.1.2.3   The Service Provider will assign named individuals for each live Client system; these named individuals will be able to complete merge requests and deploy code on live Client servers

10.1.2.4   Where it is not possible to re-create an issue locally and debugging on a Client live system is essential, the Service Providers Devops team will be able to grant time limited access to individual support engineers to allow the Client system to be debugged

10.1.3   Monitor and control access to Clients data:

10.1.3.1   Client's live data should only ever exist on live servers or equivalent integration/mirror servers this include data in files e.g. CSVs, PDFs etc as well as data held within an actual database within any of the Bespoke Software

10.1.3.2   all Bespoke Software should have a facility for creating a test data set for staging/development purposes that is based on anonymised live data

10.1.3.3   access to Client live databases will be limited to the Service Providers Devops team

10.1.3.4   when any new Bespoke Software is implemented and the Client needs to supply data files for data conversion activities, the Service Provider and the Client need to agree a secure mechanism for transfer and should destroy the Client's data once uploaded

10.1.4   Monitor and control Bespoke Software security:

10.1.4.1   personal data fields should be encrypted within a database e.g. names, dob, addresses etc

10.1.4.2   where any of the Bespoke Software generates or processes files that contain personal data, these should be automatically destroyed within an agreed time frame i.e. 48hrs

10.1.4.3   audit trails need to be built into all of the Bespoke Software where possible in both front end and back end, to track all changes to data

10.1.5   Monitor and control general data security activities:

10.1.5.1   login details / passwords should never be sent over email; The Service Provider uses the service LastPass across the team which is used for managing shared passwords

10.1.5.2   As a general rule, no one at the Service Provider should have a log in to a Client's live system; the Client must understand that this might be difficult for support so it may be Helpdesk Manager manages access to client systems via LastPass and can provide temporary access as and when needed

10.2   For any Bespoke Software that holds personal data, in order to limit the possibility of a data security breach; the Service Provider recommends that the Client;

10.2.1   Secures an independent 3rd party to perform an external penetration test on the software delivered by the Service Provider; the Service Provider can recommend and introduce to the Client, providers of this service

10.3   When 6.1.2 or 6.1.3 option is selected by the Client, in order to limit the effects of a data security breach, The Service Provider will ensure:

10.3.1   Any significant data breach discovered by the Service Provider or notified to the Service Provider will be treated as a Priority Level P1 as defined within this Agreement.

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10.3.2   Any significant data breach discovered by the Service Provider or notified to the Service Provider will be notified to the Client within 72 hours

11.   MAINTENANCE AND SUPPORT SERVICES

11.1   Service hours for support are between the hours of 09:00 and 18:00 on each working week day UK time (Monday to Friday excluding English public holidays).

11.2   Subject to Clause 4.2, the Service Provider will ensure that necessary work is undertaken to ensure the CMS (where configured) and all of the Bespoke Software is able to continue to Work as Intended. This is inclusive of all API/Software patches and updates. Non-security-related server patches will be applied on a monthly basis.

11.3   Up to three Super Users will be appointed by the Client Representative and expediently communicated in writing to the Service Provider.

11.4   Subject to Clause 4.2, the Service Provider shall provide in respect of the CMS (where configured) and all of the Bespoke Software, advice by telephone or via the Service Providers helpdesk system or via email upon request by the Client's Representative or the Client's Super Users with regards to any potential faults and the rectification of such faults by the issue of fixes. This support will be provided on working week days during the service hours of support.

11.5   The response time for the Services shall be as defined by this Agreement.

11.6   Maintenance and Support Services shall not include the diagnosis and rectification of any fault resulting from the unreasonable use or operation or neglect of either the CMS (where configured) or any of the Bespoke Software itself, or any computer equipment used by the Client; or the use of the same for a purpose for which they were not designed. In such cases, the Service Provider should be entitled to charge the Client for any and all time spent investigating and rectifying the problem at the Service Providers standard support charge out rate in effect at that time.

11.7   For any changes to existing functionality or additional functionality that is requested by the Client, the Service Provider can choose to undertake these activities at no additional cost to the Client, however this is entirely at the Service Providers discretion.

11.8   Incident Prioritisation. The Client shall, acting in good faith, and using good commercial business sense, categorise each Incident based on its urgency and its impact on any of the Bespoke Software, these inputs will be used to categorise the priority of the issue.

11.8.1   Urgency

Urgency	Categorisation Definition
Critical	Matters affecting ability to perform significant business function
High	Matters important to business but where business is able to continue
Medium	Matters where business can continue, or a workaround for the issue has been found
Low	Matters where ability to do business function is not affected

11.8.2   Impact

Impact	Categorisation Definition
Extensive / Widespread	Any of the entire Bespoke Software is down or unusable
Significant / Large	A large portion of any Bespoke Software is unavailable or unusable
Moderate / Limited	A specific page, function or set of users are affected
Minor / Localised	Only one portion of a page or small area of functionality is affected, and/or there is a valid workaround

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	The issue relates to styling or particular elements
	Only one or a small set of users are affected and are still able to use the Bespoke Software

11.8.3 Calculation of Priority based on Impact and Urgency

The Urgency & Impact values provided will be used to calculate the priority of the issue as P1, P2, P3, P4 & P5 (each such priority level as more particularly detailed in the table below).

	Urgency			
Impact	Critical	High	Medium	Low
Extensive / Widespread	P1	P1	P2	P3
Significant / Large	P1	P2	P3	P4
Moderate / Limited	P2	P3	P4	P5
Minor / Localised	P3	P4	P5	P5

11.8.4 Examples of priority levels include but not limited to:

Priority Level	Type Of Issue
P1 - Total Bespoke Software outage	● Issues that render the Bespoke Software as a whole or any vital function unusable ● Actions that severely compromise the security of the site or data held within it
P2 - Partial Bespoke Software outage	● Issues that limit the functionality of the Bespoke Software to a degree where a user is not able to use a significant portion of the Bespoke Software ● Issues that compromise the user experience of the Bespoke Software on a regular basis ● Data held or logged by the Bespoke Software is corrupt
P3 – Localised loss of functionality restricted to specific areas of application or particular users	● Issues causing the Bespoke Software to constantly function slowly, but correctly ● Issues occurring on individual functions of the site but not affecting the end to end user functionality of the site ● Issues affecting one or a subset of users
P4 – small bugs not affecting usability of the site	● Minor faults where the whole Bespoke Software works well but parts are not functioning properly, but this does not affect the overall impact of the Bespoke Software ● Internal or external non-critical errors ● Functionality changes or styling updates
P5 – minor styling issues intermittent bugs	● All other general and scheduled maintenance work or Bespoke Software additions and changes ● Minor styling updates ● Localised bugs which are infrequent or intermittent

11.9   The Service Provider's Responsibilities subject to Clause 4.2:

11.9.1   all Incidents raised by the Client will be logged with the Service Provider and will be categorised as per the Priority supplied by the Client (see above: "Incident Prioritisation");

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11.9.2   the Client will be kept updated as to the progress of the Incident in a timely manner;

11.9.3   maintenance and Support will be available during service hours for support to assist with all Incidents and troubleshooting issues with the Response and Resolution times for each Incident priority type shown in the table below; for the avoidance of doubt, the time for Resolution starts at the end of the Response time.

11.10   Client's Responsibilities

11.10.1   the Client will provide a list of Super Users to the Service Provider;

11.10.2   when logging an Incident, the Client will provide to the Service Provider the following diagnostic information

- Required:
  - A brief Summary of the Incident
  - The URL of the page the Incident occurred on
  - Detailed description of the Incident; including the expected behaviour and when the incident occurred, as well as any other supplementary information which may aid investigation of the issue.
  - Step by step instructions to reproduce the reported Incident
- Encouraged but not required
  - Browser specification of the browser in use when the incident occurred
  - Screenshots or documents relating to the issue

Priority Level	Target Response Time	Target Resolution Time
P1 - Total Bespoke Software outage	15 mins	1 hour
P2 - Partial Bespoke Software outage	4 hours	24 hours
P3 – Localised loss of functionality restricted to specific areas of application or particular users	24 hours	36 hours
P4 – small bugs not affecting usability of the site	24 hours	Case-by-case basis
P5 – minor styling issues, intermittent bugs	24 hours	Case-by-case basis

12.   **CHARGES**

12.1   The charges for the Services are specified in the Agreement and may be varied if the Client's requirements change during the course of providing the Services or if any of the Services take longer than anticipated to complete due to the act, omission or delay of the Client.

12.2   Failure to make payment for Maintenance and Support Services when due may result in the Service Provider withdrawing the Client's use of the Maintenance and Support Services provided the Client with written notice of such failure and the Client has not rectified the same within 14 working days of receipt of such notice. A reasonable reconnection fee may be payable thereafter for resumption of service upon receipt of overdue payment.

12.3   All charges are exclusive of any VAT and all other duties and shall be payable by the Client (together with value added tax thereon) within 28 days of receipt of an invoice thereof unless stated otherwise.

13.   **CMS (WHERE CONFIGURED) AND BESPOKE SOFTWARE CONTENT & USE**

13.1   If the Bespoke Software is hosted on one of the Service Providers shared virtual servers (Option 6.1.2 selected), the Client acknowledges and agrees that the Service Provider may be required at any time and without prior notice to

remove the Bespoke Software from its Hosting platform (where applicable) and/or bar access to the same and to any CMS (where configured) in the event of any violation or alleged or suspected violation of Industry Standard Codes of Conduct or if otherwise authorised so to do by a competent law enforcement agency; however where reasonably possible, the Service Provider will notify the Client and offer a reasonable time to remedy any violation or suspected violation.

13.2 If the Bespoke Software is hosted on the Client's own Hosting platform (Option 6.1.1 or 6.1.3 selected), the Client and the Service Provider acknowledges and agrees that the Client is entirely responsible for all content that resides within the software maintained under this Agreement.

13.3 If the Bespoke Software is hosted on one of the Service Providers shared virtual servers (Option 6.1.2 selected), the Client undertakes to make best endeavours that any material contained in or linked to its Bespoke Software and (if applicable) contained in its discussion group, chat room or bulletin board ("Material") must comply with the following basic standards:

13.3.1 All information and activities must be legal, decent and honest (in terms of law and standards);

13.3.2 Data protection legislation in order that the processing of personal information is lawful;

13.3.3 Distance selling requirements as related to on-line activities must be complied with as laid down by law;

13.3.4 Other applicable trading standards, laws and regulations as they are created from time to time;

13.4 The Client undertakes to comply with generally accepted principles of Internet usage (whether governed by the laws of any jurisdiction or not) including refraining from intentionally sending "spam mail" (i.e. unsolicited mass communications), never intentionally sending mail bombs, Trojan horses, viruses or other disruptive programs or devices and never intentionally violating the security of any website or engaging in unauthorised decryption of protected material.

13.5 The Client acknowledges and agrees that the Service Provider may be required by a law enforcement agency to monitor Bespoke Software content and traffic and if necessary give evidence of the same together with use of the login ID and password to support or defend any dispute or actionable cause or matter which arises in relation to the same.

14. **CLIENT OBLIGATIONS**

14.1 The Client is solely responsible for the accuracy, legality, currency and compliance of the content held within the CMS (where configured) and the Bespoke Software and will be solely liable for false, misleading, inaccurate, infringing or other actionable material contained or referred to therein.

14.2 The Client undertakes to ensure that any electronic file and/or code supplied to the Service Provider by the Client shall be scanned and passed as clear of all viruses, worms or other destructive computer code, using up to date and reputable anti-virus software, prior to submission of the electronic file and/or code to the Service Provider.

14.3 The Client is solely responsible for maintaining the confidentiality and security of any account with the Service Provider in relation to CMS (where configured) and the Bespoke Software and usage thereof including use of unique login ID and password.

14.4 The Client agrees to provide a testimonial to the Service Provider regarding their Services provided, which can be used on the Service Providers marketing materials and website, however the Service Provider acknowledges that this will be by agreement with the Client.

14.5 The Client hereby accepts that the Service Provider is in no way responsible for breaches of contract resulting from the Client failing to meet its obligations under this agreement, including adequate and appropriate input to the development, testing Maintenance and Support and feedback processes.

14.6 The Client shall notify the Service Provider immediately if the Client becomes aware of any unauthorised use of the whole or any part of the CMS (where configured) or any of the Bespoke Software.

15. **EXCLUSIONS AND LIMITATION OF LIABILITY**

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15.1   The Client acknowledges specifically that the CMS (where configured) is Open Source, and the Service Provider will not be held liable for any of its faults or failings other than those which should have reasonably been identified and addressed as part of the Service Providers due diligence.

15.2   The Client acknowledges that the Service Provider will not be held liable for any of its faults or failings of any Open Source software configured within the Bespoke Software, other than those which should have reasonably been identified and addressed as part of the Service Providers due diligence.

15.3   Where the Bespoke Software built by the Service Provider relies on a service provided by a Third-Party Supplier, this agreement only covers Bespoke Code developed by the Service Provider to support the integration of such services and does not extend to services provided by a Third-Party Supplier.

15.4   The Service Provider does not warrant the accuracy or completeness of any back-up copies of the CMS (where configured) and the Bespoke Software kept by the Service Provider although they agree to use its reasonable endeavours to ensure any such back-up copies are accurate and complete. The Service Provider recommends that it is best practice for the Client to undertake its own regular data backup / restore testing. The Service Provider agrees to work with the Client to facilitate on an annual basis the full restoration of data back-ups so that the Client can verify the accuracy of any back-up copies taken by the Service Provider.

15.5   While the Service Provider shall use its reasonable endeavours to ensure the integrity, safety and security of the Hosting environment and platform, the Service Provider does not guarantee that such Hosting environment and platform will be free from hackers and/or unauthorised users.

15.6   Nothing in this Agreement shall exclude either party's liability for death or personal injury resulting from negligence or for fraud.

15.7   In the event that the Service Provider becomes liable for loss or damage, such liability shall be limited to the aggregate of the charges paid by the Client to the Service Provider in the 12 months preceding the event, giving rise to liability.

16.   **INTELLECTUAL PROPERTY RIGHTS**

16.1   Any Open Source CMS (where configured) or any other Open Source software configured within the Bespoke Software, will be subject to its own GPL licence, which will contain details of its intellectual property rights to which the Client will be subject to.

16.2   Nothing in this Agreement shall affect the ownership of intellectual property rights existing prior to this Agreement or generated outside of the scope of the Agreement and no right, title or interest in a party's intellectual property rights shall pass to the other party except as specifically provided for in this Agreement.

16.3   The Service Provider acknowledges that any Bespoke Code developed by the Service Provider within the Bespoke Software under this Agreement will be irrevocably and exclusively assigned with full title guarantee by way of present and future assignment all its right, title and interest (including without limitation copyright) to the Client insofar as such copyright is owned by the Service Provider, upon payment by the Client of the Project Fee due under this Agreement.

16.4   Any and all of the copyright, database rights, trademarks, trade names, patents and other intellectual property rights created, developed, subsisting or used (save for any intellectual property rights, including without limitation trademarks and logos, of the Client) in or in connection with development of the Bespoke Software aside from the Bespoke Code are and shall remain the sole property of the Service Provider.

16.5   In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement, the Client acknowledges, that the same shall be assigned to the Client insofar as such copyright is owned by the Service Provider, upon payment by the Client of the Project Fee due under this Agreement.

16.6   The Service Provider hereby irrevocably and exclusively assigns with full title guarantee by way of present and future assignment all its right, title and interest (including without limitation copyright) in the Bespoke Code to the Client insofar as such copyright is owned by the Service Provider upon payment by the Client of the Project Fee due under this Agreement..

16.7   For the avoidance of doubt, the Service Provider has no claim on any copyright and other intellectual property rights of whatever nature in any Bespoke Code written by a Third-Party Supplier.

17. INDEMNITY

17.1   The Client agrees to indemnify and save harmless and defend at its own expense the Service Provider from and against any liability, damages, costs, claims (including reasonable outside legal fees) directly incurred by the Service Provider resulting in any way from:

   i.   all claims of infringement of copyright, database rights, patents, trademarks, industrial designs, or other intellectual property rights affecting the Bespoke Software or the Maintenance and Support Services and based upon the Client's actions or contribution to the Client Content; or

   ii. a breach by the Client of any of its warranties or obligations under this Agreement.

17.2   The Service Provider agrees to indemnify and hold harmless and defend at its own expense the Client from and against any liability, damages, costs, claims (including reasonable outside legal fees, loss of profits and any consequential losses) resulting in any way from:

   i.   all claims of infringement of copyright, passing off rights, database rights, patents, trademarks, industrial designs or other intellectual property rights affecting the Bespoke Software, the Bespoke Code, the Hosting platform (where applicable) and/or the Maintenance and Support services; or

   ii. a breach by the Service Provider of any of its warranties or obligations under this Agreement.

17.3   The Service Provider and the Client undertake that the other shall be given notice of any claim specified in 18.1 or 18.2 above, as applicable that is made against the Service Provider or the Client, as applicable, and neither the Service Provider nor the Client, as applicable, shall have the right to defend any such claims and make settlements thereof at its own discretion and both parties agree to give such assistance as the other may reasonably require and at its expense to settle or oppose any such claims.

18. CONFIDENTIAL INFORMATION

18.1   All information, drawings, specifications, documents, contracts, design material and all other data which the Service Provider may have imparted and may from time to time impart to the Client relating to without limitation its know-how, its business, clients, prices, services, software, contracts (including this Agreement), Bespoke Software design, architecture and content (including any technical specifications therefore), is proprietary and confidential.

18.2   The Client hereby agrees that it will use such confidential information and all other data solely for the purposes of this Agreement and that it will not, at any time during or any time after the completion, expiry or termination of this Agreement use or disclose the same whether directly or indirectly, to any third party without the Service Provider's prior written consent.

18.3   All information, drawings, specifications, documents, contracts, design material and all other data which the Client may have imparted and may from time to time impart to the Service Provider relating to without limitation its know-how, its business, clients, prices, services, software, contracts (including this Agreement), Bespoke Software design, Client Content, architecture and content (including any technical specifications therefore), is proprietary and confidential.

18.4   The Service Provider hereby agrees that it will use such confidential information and all other data solely for the purposes of this Agreement and that it will not, at any time during or any time after the completion, expiry or termination of this Agreement use or disclose the same whether directly or indirectly, to any third party without the Client's prior written consent.

18.5   The Service Provider and the Client (and each of its respective employees and consultants or advisors to whom any confidential information requires to be disclosed), will if so requested, sign a separate confidentiality agreement.

19. TERMINATION

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19.1   Either party may terminate this Agreement or one or more of the affected Services by written notice to the other by giving not less than 90 days' notice in advance of any contract renewal date.

19.2   Either party may forthwith terminate this Agreement or one or more of the affected Services or Software Licences by written notice to the other if any of the following events occur:

   19.2.1   any breach of the terms or conditions of this Agreement including the terms, conditions and provisions of any schedule attached or adopted hereto and the defaulting party fails to remedy such breach (unless it is a breach which entitles the other to terminate this Agreement immediately insofar as such breach is not capable of remedy) within fourteen (14) days after receiving written notice requiring it to do so.

   19.2.2   if the other becomes bankrupt or compounds or makes any arrangement with or for the benefit of its creditors or (being a company) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) or has a receiver, administrator or manager appointed over the whole or substantially the whole of its undertakings, business or assets or if any distress or execution will be threatened or levied upon any equipment and/or software or other property of the party entitled to serve notice hereunder or if the other party is unable to pay its debts in accordance with the law relating to this Agreement.

   19.2.3   the Client fails to pay any of the fees on the agreed terms set out in this Agreement.

19.3   Notwithstanding clause 20.1, and subject to Clause 4.2, the Service Provider acknowledges that failure to deliver the Project, ensuring the Bespoke Software remains in a state where it can Work as Intended, will result in breach of contract, and will be subject to the following:

   19.3.1   If acceptable remedial action cannot be agreed upon, or is agreed upon but not delivered within an agreed period, the Client acknowledges that no further payments may be released by the Client.

   19.3.2   The Client reserves the right to issue notice of intent to terminate which will be in writing and outline the reasons for intended termination. The Service Provider will have 7 days to propose a solution, and the Client is obliged to accept any reasonable proposal which will ensure the Project is delivered in line with the parameters of the Project Scope.

   19.3.3   Client's refusal to accept a reasonable proposal to remedy by the Service Provider, which imposes no additional fiscal obligations on the Client, will constitute a breach of contract by the Client, which allows the Service Provider to   terminate this contract, making the Client liable for the Service Providers irretrievable costs.

19.4   Within seven (7) days after the date of termination of this Agreement for whatever reason, both parties will return or destroy (as instructed) all confidential information belonging to the other.

19.5   Following termination of this Agreement, the Service Provider shall at the Client's request, cooperate with and provide such assistance as the Client may require to effect a full smooth and orderly transfer of the Services to the Client or any replacement Third-Party Supplier who has the requisite skills and experience relevant to the software provided by the Service Provider, and shall provide any replacement supplier with any information, documentation or materials reasonably required by the Client in order to fully restore service; The Client acknowledges that any time spent by the Service Provider on this activity will be subject to the Service Providers standard charges.

19.6   Termination of this Agreement will be without prejudice to 20.4 nor 20.5 above nor to any accrued rights of either party and will not affect obligations which are expressed not to be affected by expiry or termination hereof.

20.   **FORCE MAJEURE**

20.1   The Service Provider shall not be under any liability to the Client in any way whatsoever for destruction, damage, delay or any other matters of that nature whatsoever arising out of any matter which is beyond the reasonable control of the Service Provider including war, rebellion, earthquake, civil commotion, strikes, lock-outs and industrial disputes, fire, explosion, acts of God, flood, drought, global pandemic, bad weather, the requisitioning or other act or order by any Government department, council or other constituted body.

21.   **NOTICES**

Any notice required or permitted under the terms of this Agreement or required by statute, law or regulation will (unless otherwise provided) be in writing and will be delivered in person, sent by registered mail (properly posted and fully prepaid in an envelope properly addressed) or sent by email to the respective parties Representative to the

correspondence address set out in this document, or to such other address or email address as may from time to time be designated by notice hereunder. Any such notice will be in the English language and will be considered to have been given on the first working day of actual delivery or sending by email or in any other event within 3 working days after it was posted in the manner provided above.

22. MUTUAL WAIVERS

Failure or neglect by the Service Provider or Client to enforce at any time any of the provisions hereof will not be construed nor will be deemed to be a waiver of the Service Provider or Client's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the Service Provider or Client's rights, to take subsequent action.

23. SEVERABILITY

In the event that any of these terms, conditions or provisions or those of any schedule or attachment hereto will be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

24. DATA PROTECTION

24.1   The Service Provider provides services to the Client under this Agreement and as part of these services the Service Provider processes personal data belonging to the Client.

24.2   Privacy and Data Protection Legislation governing the processing of personal data by the Service Provider belonging to the Client:

24.2.1   the General Data Protection Regulations, as amended from time to time.
24.2.2   EU Data Protection Directive (95/46/EC), as amended from time to time.
24.2.3   the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended), the General Data Protection Regulation (EU 2016/679) and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, and the equivalent of any of the foregoing in any relevant jurisdiction. References to legislation include any amendments made to those laws from time to time.

24.3   Article 28(3) of the General Data Protection Regulation states that the Client must enter into a written contract containing certain statutory data protection clauses. In order to comply with this requirement, the Client and the Service Provider acknowledge that a separate Processing Agreement permitting the Client to allow the Service Provider to process any personal data will be agreed. Where any provisions of this Agreement conflict with the Processing Agreement, the Processing Agreement shall take precedence.

24.4   The following definitions apply:

24.4.1   the terms "data controller", "data processor", "data subject" and "processing" bear the respective meanings given them in the Data Protection Act 1998, and "data protection principles" means the eight data protection principles set out in Schedule 1 to that Act.
24.4.2   data includes any personal data provided by or on behalf of the Client

24.5   The Processing Agreement will facilitate

24.5.1   The Data Controller agreeing to enable access to the Personal Data with the Data Processor in the European Economic Area (EEA) on terms set out in the Processing Agreement in relation to managing and supporting the software solutions provided by the Data Processor.
24.5.2   The Data Processor agreeing to safeguard / ensure the security of the Personal Data within the EEA on the terms set out in the Processing Agreement and in accordance with this Agreement.

24.6   The Service Provider shall:

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24.6.1   only carry out processing of any Client personal data on the Client's instructions;

24.6.2   implement appropriate technical and organisational measures to protect any Client personal data against unauthorised or unlawful processing and accidental loss or damage;

24.6.3   not transfer Client personal data to countries outside the European Economic Area unless this is agreed explicitly by the Client.

24.7   The Service Provider shall promptly and fully notify the Client in writing of any notices in connection with the processing of any Client personal data, including subject access requests, and provide such information and assistance as the Client may reasonably require.

24.8   The Client acknowledges that the Service Provider will be a data processor, not a data controller, in respect of all data processing activities that the Service Provider carries out under this Agreement.

25. NON-SOLICITATION

25.1   Non-Solicitation of Employees: Each party agrees that they will not, without the prior written consent of the other party, either directly, indirectly or via any 3rd party controlled or in association with, solicit for employment, or endeavour to employ or to retain as an independent contractor or agent, any person who is an employee or independent contractor to the other party. Each party further agrees that, should any party be approached by a person who is or has been an employee or independent contractor to the other party they will not offer to nor employ or retain as an independent contractor or agent any such person.

25.2   Non-Solicitation of clients and partners: Each party agrees that they will not, without the prior written consent of the other party, either directly, indirectly or via any 3rd party controlled or in association with, solicit, endeavour to solicit or gain the custom of, canvass or interfere with any person, company or organisation who is a client or partner of the other party or use any knowledge of or influence over any such client or partner for their own benefit or that of any other person competing with the other party.

26. NO THIRD-PARTY RIGHTS

For the avoidance of doubt nothing in this Agreement shall confer on any third party any benefit or right to enforce a term of this Agreement.

27. LAW AND JURISDICTION

The parties hereby agree that this Agreement and the provisions hereof will be construed in accordance with English Law and the parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

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