

Master Services Agreement

This Master Services MSA (the 'MSA ') is entered into on [DATE] by and between Phew Design Limited, a limited liability company registered in England and Wales with Company number 04219588, whose registered office is at Cheribourne House, 45a Station Road, Willington, Bedfordshire, MK44 3QL, ('Phew!', 'Us', 'We', 'Our'), and [CUSTOMER], a company registered in England and Wales with Company Number [xxxx], whose principal place of business is at [xxx] ('You', 'Your '), together jointly referred to as 'Both of Us ', or 'the Parties '.

BOTH OF US HEREBY AGREE AS FOLLOWS:

1 Definitions and Interpretation

1.1 The following terms have the meanings set forth below whenever they are used in this MSA and any Appendices:

'Acceptance'	means the acceptance of a Deliverable in accordance with the process described in clause 8 (and 'Accept 'and 'Accepted 'shall be interpreted accordingly).
'Acceptance Criteria'	means the acceptance criteria, if any, agreed by the parties as set out in or referenced by the applicable Quotation.
'User Account'	means an online account protected by a login requirement, to access and use a Digital Product.
'Administrator Users'	means Your representatives or employees who are permitted by Your appointed System Administrator(s) Users to carry out the activities described for each DP in the relevant Definition clause of Appendix 1.
'Advanced Audit System'	means the enhanced configuration of Our Audit System Digital Product designed for processing sensitive personal data with enhanced security features including encryption at rest, mandatory Multi-Factor Authentication, explicit access provisioning, and restricted export functionality. Full specifications defined in Appendix 1, Section 1.3.
'Approved Country'	means the European Economic Area (as such term is commonly understood) and any territory which is subject to a current

	finding by the relevant authority under applicable Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals.
'Audit System'	means Our Digital Product for the collection of audit data and its subsequent reporting, offered in two configurations: Standard Audit System (for organisation-based audits with standard security controls) and Advanced Audit System (for audits involving sensitive personal data with enhanced security). Full specifications for both configurations are set out in Appendix 1, Sections 1.2 and 1.3.
'Authorised Users'	means Your employees, representatives, delegates or other individuals authorised by You to access and use the Digital Products via a User Account or, as the case may be, to access and use the Website via registration, who may have different roles, as defined in this Section 1 and in the relevant Digital Product's specific Definition clause of Appendix 1.
'Change Requests'	means requests for additions or modifications to a Digital Product, the Services or the Deliverables, the License Limit and the Contract Year in which the Licensed Units are to be used, that might be agreed by Both of Us during the course of a particular Contract in accordance with clause 4.
'Commencement Date'	means the commencement date of a Contract, which shall be the date on which the Contract is entered into as set out in clause 2.
'Content'	means any images, text, graphics, logos, videos, or other visual or written materials.

'Contract'	means each Quotation, together with this MSA and the relevant additional terms set out in the section of Appendix 1, and in the 'Purchase Terms' section of the Quotation accepted by You in accordance with clause 2.
'Contract Year'	means a twelve-months period beginning on the Commencement Date of a Contract or on any subsequent anniversary thereof.
'CREST'	means the Council of Registered Ethical Security Tester, an international accreditation and certification body representing and supporting the technical information security industry, which issued the CREST certification to Us.
'Customer Content'	means any content that You provide to Us for the purpose of Our supply of Services or creation of Deliverables, or that You or an Authorised User upload or enter into a Digital Product in the course of using or carrying out the System Administrator(s) User's and Administrator User's Activities defined in Appendix 1 at any time, system,
'Customer Third-Party Software'	means software licensed directly to You by a third party, to which You grant Us access in order to deliver the Services and prepare the Deliverables and shall include all documentation, updates, enhancements, modifications new releases and revisions.
'Data Protection Legislation'	means the Data Protection Act 2018, UK GDPR and any other applicable European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated).

'Deliverable'	means a website, piece of software, documentation or other work product that We create for You in the course of Our Services, as further described in the applicable Quotation.
'Digital Product' or 'DP'	means one of Our products as described in Appendix 1, and licensed to You under a Contract.
'Fair Use Policy'	means the fair use policy of Support set out in clause 3 of Appendix 2.
'Fees'	means the Minimum Annual DP Fee and the Licence Fee, together with any and all Services Fees.
'Fixed Term'	means the 3 years, or 5 years or such other fixed number of years of duration of a Contract for a Digital Product, as specified in the applicable Quotation.
'Hosting'	means the provision of computer facilities on which a Deliverable may be stored and operated, and from which it may be accessed via the internet, as further described in Appendix 3.
'Licence Fee'	means the fee for Your licence to use a Digital Product for Licensed Units up to the Licence Limit, as set out in the applicable Quotation.
'Licence Limit'	means any maximum number of Licensed Units You may use during a Contract Year for a particular Digital Product, as set out in the applicable Quotation.
'Licensed Unit'	means the applicable unit of measure by which Your use of a Digital Product is licensed, as specified in Appendix 1.
'Minimum Annual DP Fee'	means the minimum sum payable by You in respect of a Digital Product during each Contract Year, as set out in the applicable Quotation.
'Minimum Term'	means the twelve-months period of minimum duration of a Contract for a Digital Product, as specified in the applicable Quotation.

'Out-of-Scope Request'	Means a request of changes that are significant and of a different nature to the original Services or Deliverables.
'Project Plan'	means the plan for the delivery of the Services and/or the Deliverables agreed by You and Us.
'Public User'	means any person who can access a Digital Product without a User Account or login credentials and can use limited features of, or subscribe for Newsletter within certain DPs, as specified in Appendix 1.
'Purchase Order 'or 'PO'	means the written document that has been raised by You within the Validity Period and that expressly references Our corresponding Quotation.
'Quotation'	means Our quotation to You that specifies: a) that it is subject to this MSA; and b) which Digital Product(s) shall be supplied, along with the relevant Minimum Annual DP Fee, Licence Fee and Licence Limit; and c) a description of any Services to be supplied, including a Specification for any Deliverables, whether Acceptance shall apply to such Deliverables (and, if so, the Acceptance Criteria), and the number of Support Minutes to be included (if any), together with the applicable Services Fees; and d) the Validity Period; and e) any assumptions and specific obligations for You that will apply to the Quotation.
'Services'	means the services provided by Us, such as, but not limited to, implementation and configuration of Digital Products, website and Deliverable development, Hosting, consultancy, training and Support, each as further set out in the relevant Quotation.

'Services Fees'	means the fees to be paid in respect of Services delivered, as set out in the relevant Quotation.
'Specification'	means the functional description for a Digital Product or for a Deliverable (as agreed by You and Us in writing), each as amended from time to time.
'Standard Audit System'	the standard configuration of Our Audit System Digital Product for organisation-based audits, where users within an organisation automatically have access to their organisation's audits. Full specifications defined in Appendix 1, Section 1.2.
'System Administrator(s) Users'	means Your representatives or employees who are permitted by You to carry out, in the context of each DP, the System Administrator(s) User Activities defined in Appendix 1.
'Support'	means Our support services provided to You with regards to Our Digital Products and for any Deliverable We may provide to You under a Contract, as further set out in Appendix 2.
'Support Minutes'	means the number of minutes of Support purchased by You in respect of a Deliverable, as set out in the relevant Quotation.
'Third-Party Software'	means software licensed to Us by a third party, that we use for supplying Services, or creating Our Digital Products or Deliverables, to which We grant You access for using the Service, Digital Products and Deliverables, and shall include all documentation, updates, enhancements, modifications new releases and revisions.
'Users'	means System Administrator(s), Administrator Users and Authorised Users.
'Validity Period'	means the period of time, beginning on the date of Our Quotation, for which the Quotation is available for acceptance by You in accordance with clause 2, which shall be 30 (thirty) days unless otherwise specified in the Quotation.

'Website'	means a Deliverable created by Us and provided to You in the form of a website.
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2 Contract formation

- 2.1 The MSA is a framework enabling You and Us to create legally binding Contracts for the purchase of Digital Products, Services and Deliverables.
- 2.2 We offer many different Digital Products, Services and Deliverables and the main body of the MSA only contains the terms and conditions ('terms') that apply to all of them. Additional terms are required for some DPs, Service or Deliverable and each set of additional terms is set out in a relevant clause of Appendix 1, Appendix 2 of this Agreement.
- 2.3 From time to time, You may request, and We may provide, a Quotation for the supply of Digital Products and/or Services and/or Deliverables. Your acceptance of a Quotation within the Validity Period by:
 - a) digitally signing the Quotation; or
 - b) physically signing the Quotation; or
 - c) issuing a PO referencing the Quotation,
 shall create a binding Contract between You and Us for the supply and purchase of the Digital Products and/or Services set out in the Quotation, subject to the terms and conditions set out in this MSA.
- 2.4 Unless You and We expressly agree otherwise in writing, We are entitled to accept signature or email approval from any member of Your team as binding authority to proceed with a new Contract, to approve any Change Request, and to Accept any Digital Products, Services or Deliverables.
- 2.5 Each Contract relates to the purchase and supply of the Digital Products, Services and Deliverables set out in the applicable Quotation and is independent of all other Contracts that might exist between You and Us.
- 2.6 If the MSA is terminated, it will not be possible to enter any new Contracts, but those that already exist will continue under the terms of this MSA until completed or terminated.
- 2.7 Any special conditions set out in a Quotation that expressly reference and amend or remove a provision of the MSA shall take precedence over this Agreement. Otherwise, in the event of any conflict, the MSA shall take precedence.
- 2.8 Any terms and conditions set out in any PO or other document supplied by You that are in addition to or at variance with the terms and conditions in this MSA shall be void and of no effect.

3 Supplying Digital Products, Services and Deliverables

- 3.1 We shall provide the Digital Products, Services and Deliverables as set out in the Quotation, in accordance with any corresponding Specification, if there is one.

- 3.2 If there is no agreed Specification at the commencement of the Contract We will, as part of the Services, work with You to define the Specification which, once agreed, will form part of the applicable Contract.
- 3.3 While all timescales are given in good faith, because of the nature of the work undertaken, they must be considered to be estimates only and meeting such timescales shall not constitute the essence of a Contract. We shall let You know as soon as We become aware of any issue that might delay the performance of Services or creation of Deliverables, and shall work with You to minimise the impact of any such delays.
- 3.4 We may provide the Digital Products, Services and Deliverables ourselves or through Our subcontractors, providing always that We shall be fully liable for the acts and omissions of Our subcontractors in the performance of their obligations in respect of any Contract.

4 Change Requests

- 4.1 You may request a change to the Services or the Deliverables, an enhancement to a Digital Product, an increase in Your Licence Limit, a variation to the Contract Year in which the Licensed Units are to be used or an increase in Your Support Minutes, from time to time.
- 4.2 We may also give notice to You that a change in circumstances prompted by You (such as, but not limited to, Your use of substantially all of the Licensed Units within Your Licence Limit) constitutes a request for change even though You may not have requested one formally. In response to each such request, We shall email You a proposed Change Request setting out the details of the proposed change and its likely impact on the Fees and timescales.
- 4.3 Once Both of Us have clearly agreed a Change Request by email, it shall be considered as a variation to the applicable Quotation, or if, in Our reasonable opinion Your Change Request is an Out-of-Scope Request, We shall use it to create a new Quotation. All of these shall be delivered subject to the terms and conditions of the relevant Contract. We shall not start work on any Change Control items, and shall be entitled to continue with the originally specified Services in accordance with the Contract, until such agreement has been reached.
- 4.4 If You do not agree to the new Quotation We created as a result of Your Change Request or Out of Scope Request, We may develop the item of Your Change Request or Out of Scope Request as part of the roadmap for our Digital Product. [In such case We may finalise such items based on our product development priorities.]

5 Your Cooperation

- 5.1 You acknowledge that We need Your co-operation and support to provide the Digital Products, Services and Deliverables effectively and on time. In addition to any specific obligations set out in the Quotation, You agree to:
 - a) respond to Our requirements and communications in a timescale appropriate to their nature;
 - b) provide Us with Customer Content within the timescales agreed by Both of Us;
 - c) quickly let Us know if You are likely to have problems delivering Customer Content on time, so that We may organise Our resources to minimise the impact of any delays;
 - d) promptly review and provide feedback on work performed that needs Your input;

- e) make available working facilities such as but not limited to computer access, desk space, telephone access and parking when and to the extent We reasonably request; and
- f) make Your System Administrator(s) and Administrator Users and other personnel available as appropriate to assist Us when and to the extent as is reasonably requested by Us.

5.2 You may meet Your obligations and provide the Customer Content yourselves or through Your subcontractors, and You shall always be fully liable for the acts and omissions of Your subcontractors in the performance of their obligations in respect of any Contract. While We are always happy to work with nominated third parties on Your behalf, You acknowledge that We cannot be held responsible for their performance (or lack of performance), and You must ensure that they perform their designated tasks adequately and in a timely manner.

5.3 If We are delayed in the delivery of the Digital Products, Services and/or creation of Deliverables because of delays on Your part, We shall use Our reasonable endeavours to minimise the impact of such delays. However, You agree that We may at Our discretion pass on to You any direct costs resulting from such delays that We are not, acting reasonably, able to avoid. You shall continue to pay Us any fees that might fall due, regardless of Our failure to deliver the corresponding Services and/or Deliverables as a result of delays on Your part.

6 Security

6.1 We are ISO 27001 and ISO 9001 certified and Our operational standards are calibrated accordingly. We also run Annual penetration test, and testing of production and installations of our Learning Management System and Audit System Digital Products with Our CREST certification. We do not run penetration testing as part of the installation of any Digital Product to You, and if You require specific penetration testing of your installation this must be agreed:

- a) upon the relevant Contract, or
- b) in the context of the 3rd party scanning which may be carried out under Clause 7.4b).

6.2 We shall use Our reasonable endeavours to develop any Digital Products specified in a Contract, using software and techniques designed to keep them secure and to protect them from unauthorised access, viruses, Trojan horses and other malicious attacks, in accordance with good industry practice and Our operational standards as set forth in clause 6.1.

6.3 We shall maintain the SaaS Digital Products, applying such patches, updates and fixes as may become available from time to time to address security threats that become known to Us. in accordance with good industry practice and Our operational standards as set forth in clause 6.1.

6.4 We shall use Our reasonable endeavours to develop any Deliverables specified in a Contract, using software and techniques designed to keep them secure and protected them from unauthorised access, viruses, Trojan horses and other malicious attacks, in accordance with good industry practice and Our operational standards as set forth in clause 6.1, and we shall do in the form of Support and in accordance with the terms of this MSA and Appendix 2.

6.5 Clause 6.2 also applies in respect of Deliverables, however in this case within the Support minutes to which You are entitled by default when You purchase a Deliverable from Us.

- 6.6 We shall not be liable for any unauthorised access to Your system or data or for any loss or damage incurred by You, as a result of the use of access facilities or other features of the Digital Products or any Deliverable for unauthorised purposes by Users, or by any third party as a result of Your breach of the provisions of clause 7.2.
- 6.7 You agree that You will be liable for any loss or damage arising from the infringement of any third party's rights under the Data Protection Legislation as a result of Your failure to comply with the earlier provisions of this clause 6, and We shall have no liability in respect of any loss or damage You that may incur as a result of such failure.
- 6.8 You acknowledge and agree that:
- a) Our Audit System can store or share confidential information or sensitive data only to the extent required for, or in connection with, the purpose of conducting audits, with the level of security appropriate to the audit configuration selected;
 - b) The Audit System offers two configurations: (i) Standard Audit System - for organisation-based audits with standard security controls; and (ii) Advanced Audit System - for audits involving sensitive personal data, with enhanced security including encryption at rest, mandatory Multi-Factor Authentication, and explicit access provisioning controls;
- Any other Digital Products or Deliverables We supply to You are not suitable for storing or sharing confidential information or sensitive data, and You will ensure that Users understand this and do not use our Digital Products or Deliverables for sharing confidential information publicly.
- 6.9 Where You have purchased access to the Advanced Audit System configuration, You acknowledge and agree that:
- a) When Advanced Audits are enabled, all Administrator Users and Respondents must complete
 - b) mandatory Multi-Factor Authentication via SMS before accessing the Audit System;
 - c) Access to specific Advanced Audits must be explicitly provisioned by Your System Administrator(s) Users and is not granted automatically based on organisational membership;
 - d) Where multiple departments within Your organisation use the Advanced Audit System, You must have appropriate data sharing agreements in place, as System Administrators with explicitly granted access can view audits and the related responses across departments;
 - e) Export functionality for Advanced Audits requires additional security Authorisation and multi-factor authentication by the exporting user;
 - f) Print functionality for Advanced Audits is disabled for security purposes. Note that screen capture functions remain available at the operating system level;
 - g) All data within Advanced Audits is encrypted at rest using AES-256 encryption as described in Appendix 1, Section 1.3;
 - h) You are responsible for ensuring all Users with access to Advanced Audits are appropriately authorized under Data Protection Legislation to view and process the sensitive personal data contained therein.
- 6.10 Notwithstanding the earlier provisions of this clause 6, You appreciate that the internet is a harsh environment in which new forms of malicious attack are constantly being developed and deployed by individuals and organisations seeking to cause mischief or distress to website owners

or to create opportunities for commercial gain for themselves, and We accept no liability for any loss or damage caused by such malicious attacks. You agree that this is reasonable in the circumstances.

7 Digital Product Licence

- 7.1 Upon receipt of the corresponding Licence Fee, We hereby grant You a personal, limited, non-exclusive, non-transferable licence to use the Digital Product set out in the Quotation for the next Contract Year, subject to the terms of this MSA.
- 7.2 You shall ensure that:
- a) An adequate number, and in any case not less than one [1] of the Users You authorise to act as Your System Administrator(s) and Administrator Users has participated in training provided by Us, in relation to the Digital Product of which they are a System Administrator(s) [and/or Administrator] User;
 - b) Only System Administrator(s) [and Administrator] Users trained by Us in relation to the Digital Product of which they are System Administrator(s) and Administrator Users shall provide internal training to other Users of the same Digital Product and shall be entitled to request Our Support in accordance with Clause 2.2. (a) of Appendix 2 and Fair Use Policy;
 - c) Your use of the Digital Product does not exceed the Licence Limit;
 - d) Each of Your Authorised Users shall keep their login and security details secret and not permit them to be made available to any third party; and
 - e) You shall be solely responsible for the compliance of all Users with the terms and conditions of this MSA (and in particular this clause 7).
- 7.3 In respect of the Advanced Audit System configuration specifically:
- a) You acknowledge that the Advanced Audit System is an optional enhanced configuration requiring separate specification in the applicable Quotation;
 - b) Users of the Advanced Audit System must complete additional security and Multi-Factor Authentication setup training as specified by Us before being granted access;
 - c) You shall not attempt to disable, bypass, or circumvent any security features of the Advanced Audit System including but not limited to encryption at rest, Multi-Factor Authentication, explicit access provisioning, or print/export restrictions;
 - d) You acknowledge that the Advanced Audit System and Standard Audit System are separate configurations with different security controls and pricing as specified in the relevant Quotation, and that audit data is not automatically transferable between configurations without Our assistance.
- 7.4 You agree that:
- a) You will not reverse engineer, decompile, or disassemble any Digital Product, or permit any third party to do so, except to the extent that We cannot prohibit such acts by the applicable law;
 - b) You will not attempt to probe, scan or test the vulnerability of any Digital Product, or to breach any of its security or authentication measures, unless We agree otherwise in writing;

- c) You will not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to any Digital Product;
- d) You will not link to any material using or by means of any Digital Product that would, if it were included within the Customer Content, breach the provisions of clause 18;
- e) You will not sell, assign, license, lease, rent, loan, lend, transmit, network, or otherwise distribute, transfer or make available the Digital Product to third parties, except to the extent that such is required for the primary purpose of the relevant Digital Product as set forth in the relevant description in Appendix 1 and the Quotation;
- f) You are expressly prohibited from adapting, modifying, merging, revising, improving, translating, upgrading, enhancing and creating derivative works of the Digital Product for any purpose including error correction or any other type of maintenance and from permitting any third party to do so;
- g) You will maintain and not remove any notices placed on the Digital Product by Us or Our subcontractors;
- h) You will comply with the Acceptable Use. You will use reasonable endeavours to take security measures sufficient to reasonably safeguard the Digital Product from access by persons other than Users; and
- i) You will use reasonable efforts to keep the Digital Product free and clear of all claims, liens and encumbrances.
- j) You shall ensure that each of Your System Administrator(s) and Administrator Users shall be appropriately skilled, trained and qualified to perform the administrative functions required in respect of the Digital Product, and shall do so in accordance with the documentation and Our reasonable instructions.

7.5 We shall notify You when 50% of Your Licensed Units have been used, and when 80% have been used. You may purchase more by issuing a Change Request in accordance with clause 4.

7.6 During any Contract Year, Your Licence Limit may be increased in accordance with an agreed Change Request as set out in clause 4.

7.7 If at the end of the Minimum Term You have unused Licensed Units remaining at the Authorised of a Contract Year, You may renew the Contract for another Minimum Term and ask for a Change Request to carry those Licenced Units forward into a further Contract Year. We shall grant such Change subject to Your payment of the relevant Minimum Annual DP Fee.

8 Acceptance of Deliverables

8.1 For Contracts that include the provision of Deliverables, You and We may specify in the Quotation that such Deliverable shall be subject to Acceptance as set out in this clause 8.

8.2 Acceptance of the Deliverable will be on the earlier of:

- a) receipt by Us of Your written confirmation that the Deliverable has been Accepted;
- b) the expiry of a period of twenty (20) days (the 'Acceptance Period') from the date on which We make the Deliverable available to You for testing, where We have not received any rejection notices in accordance with clause 8.4. For the avoidance of doubt, this time period

shall commence from each delivery of the Deliverable, and shall recommence for a period of ten (10) days in the event of any re-delivery in accordance with clause 8.4; or

- c) the use by You of the Deliverable or any part of it for any purpose other than for the purpose of carrying out the Acceptance tests.

- 8.3 You are solely responsible for Acceptance testing the Deliverable to confirm its compliance with the Acceptance Criteria. We reserve the right to witness such Acceptance testing but shall not be obliged to do so.
- 8.4 Subject to clause 8.5, in the event that the Deliverable fails to meet the Acceptance Criteria, You shall serve a rejection notice on Us within the twenty (20)-day period of access given, specifying the grounds for such rejection. Following receipt of such rejection notice, We will rectify the relevant defects and re-deliver the Deliverable or part of the Deliverable for further Acceptance tests.
- 8.5 Failure of the Deliverable to meet the Acceptance Criteria due to problems with Your or other third party software, hardware or infrastructure shall not be deemed as a failure on the part of the Deliverable. Notwithstanding the foregoing, We shall use Our reasonable endeavours to work with You and any third party nominated by You to address such problems, subject to the availability of suitable resources and payment of the corresponding Service Fees by You, at Our then-current daily rates.
- 8.6 You acknowledge and agree that, in the absence of any notice of rejection from you or notice of acceptance, the expiry of the Acceptance Period will signify your Acceptance and We may charge you in accordance with the Quotation or, if nothing is stated in the Quotation, after five (5) days from the expiry date of the Acceptance Period.
- 8.7 The process described in clauses 8.3 and 8.4 may be repeated until such time as the Deliverable is Accepted or the relevant Contract is terminated.

9 Internet Access to Digital Products

- 9.1 It is Your responsibility to employ sufficient security measures and undertake security audits to keep the devices You use to access Our Digital Products and all data thereon secure from unauthorised access or use.
- 9.2 In any event, We shall not be liable for any unauthorised access to Your devices or data and We shall have no liability for any loss or damage incurred by You as a result of the use of access facilities or other features of the Digital Products for unauthorised purposes, except where any such use occurs as a direct result of Our negligence or breach of any terms contained herein.
- 9.3 You agree that You will be liable for any loss or damage arising from the infringement of any third party's rights under the Data Protection Legislation as a result of Your failure to comply with the earlier provisions of this section, and We shall have no liability in respect of any loss or damage You that may incur as a result of such failure.

10 Hosting

- 10.1 Where specified in a Contract, We shall provide Hosting as set out in Clause 2.

11 Support

- 11.1 Where specified in a Contract, We shall provide Support as set out in Appendix 2 in respect of each Digital Product, subject to Fair Use Policy.
- 11.2 We shall provide Support as set out in Appendix 2 in respect of each Website for which You have purchased Support in the relevant Contract, up to the total number of Support Minutes specified in that Contract. We shall notify You when 50% of Your Support Minutes have been used and when 80% have been used. You may purchase more by issuing a Change Request in accordance with clause 4.
- 11.3 If You have purchased a Website which includes the Phew WordPress Framework (as defined in section 5 of Appendix 1), Support for the Phew Wordpress Framework shall be provided only if expressly included within the Contract for the corresponding website Deliverable and chargeable at prevailing Support fees.

12 Looking after Our People

- 12.1 If We visit Your premises, You shall advise Our staff, agents or subcontractors of all rules, regulations and practices with which they should comply while on those premises. Our staff, agents and subcontractors shall comply with such rules and regulations whenever they are on Your premises. You shall take reasonable precautions to ensure the health and safety of Our staff, agents and sub-contractors while they are on Your premises.
- 12.2 Without in any way restricting the right of an employee freely to accept employment and change employment, if either party (the '**Hiring Party** ') induces the other party's employee engaged in the performance of a Contract to enter its service at any time during the term of the Contract or during a period of six months thereafter, then the Hiring Party shall pay to the other party an amount equal to fifty per cent (50%) of the employee's net annual salary with the original employer, such sum being a genuine pre-estimate of the cost of the disruption that such inducement would cause to the efficient conduct of the affected party's business.

13 Fees and Payment

- 13.1 We shall invoice You for the Services Fees in accordance with the applicable Quotation or, if not specified in the Quotation, monthly in advance. We shall invoice You for Our reasonable expenses as approved by You in writing (to include by email) monthly in arrears.
- 13.2 We shall invoice You for the Licence Fee or Minimum Annual DP Fee, as applicable in accordance with the applicable Quotation or, if not specified in the Quotation, annually in advance.
- 13.3 You agree that Digital Products shall not be made available to You until We have received payment of the corresponding Licence Fee or Minimum Annual DP Fee, as applicable.
- 13.4 Unless otherwise specified in the Quotation, You shall pay each of Our valid invoices within thirty (30) days of the date on the invoice. If You wish to dispute an invoice, You shall notify Us of the nature of the dispute in writing within ten (10) days of receiving the invoice.
- 13.5 You shall be liable for any national, European Union, value added, sales, excise, state, local, withholding or other taxes or customs duties applicable to the Fees. You shall pay an interest charge of 8% on any such undisputed sum that is overdue in accordance with the Late Payment of Commercial Debts (Interest) Act (1998) (as amended).

- 13.6 We review Our pricing annually and we use the Consumer Price Index (CPI), along with other sector specific factors, based on which We may increase Our Fees:
- a) In December of the Contract Year, with effect from 1st April of the following Contract Year; or
 - b) by giving You not less than 30 days prior written notice, but not more than once in each Contract Year, and such increase shall apply from the beginning of the next Contract Year; or
 - c) in accordance with the Quotation.
- 13.7 If payment of the Fees or any part thereof is overdue, then unless You have notified Us in writing that such payment is in dispute in accordance with clause 13.4 We shall notify You in writing of such delay and if the Fees are not paid in full within ten (10) days of the date of such notice, We may at Our option:
- a) suspend provision of the Digital Products and/or Services until the corresponding overdue fees (including any interest due under clause 13.5) are paid in full; or
 - b) treat such as a material breach and terminate the relevant Contract in accordance with clause 17.3a). We may invoice You upon such termination for the remainder of the Fees in respect of any incomplete Minimum Term.

14 Warranties and Exclusions

- 14.1 Subject to the exceptions set out below in clauses 14.4 and 14.4 and the limitations upon Our liability in clause 16, We warrant that the Digital Products will substantially comply with the Specification, if there is one. We do not warrant that the operation of the Digital Products will be uninterrupted or error free.
- 14.2 Subject to the exceptions set out below in clauses 13.4, 13.5 and 14.4 and the limitations upon Our liability in clause 16, We warrant that for a period of one (1) month from the date of Acceptance (or from the date on which the Deliverables are first made available to You, in the event that no Acceptance process has been specified) the Deliverables will substantially comply with the Specification, if there is one We do not warrant that the operation of the Deliverables will be uninterrupted or error free.
- 14.3 We hereby warrant that the Services will be carried out with reasonable skill and care by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.
- 14.4 The warranties set out in clauses 14.1, 14.2, and 14.3 are all subject to Our limit of liability as set out in clause 16 and do not apply to the extent that the warranty claim arises from:
- a) problems arising from Our use of Customer Content in accordance with the Contract;
 - b) the operation of a Digital Product or a Deliverable other than in the operating environment set out for it in the Specification;
 - c) any breach of the Contract by You;
 - d) services or modifications not performed by Us;
 - e) integration with third party software or hardware without Our prior written consent; or

f) use other than as permitted under the relevant Contract.

14.5 The warranties set out in this clause 14 are the only warranties that apply to the Digital Products, Services, Deliverables and the Third-Party Software. We hereby exclude all other conditions, warranties, representations or other terms that might otherwise be implied or incorporated into a Contract by law, such as (but not limited to) those of satisfactory quality, fitness for a particular or any purpose, or the ability to achieve any particular result.

15 Warranty Remedies

15.1 If You believe that We have failed to meet one of the warranty commitments We have set out in clause 14, You will promptly make Us aware of the problem and give Us a reasonable opportunity to remedy it (either by ourselves or through a third party). We shall work with You to put things right, at no additional cost to You.

15.2 If, despite Our reasonable efforts, We believe that We cannot remedy a material breach of any warranty set out in clause 14, We will accept the return of the non-conforming Deliverables or Digital Products and refund the corresponding Fees and the Contract shall immediately terminate. You agree that the remedies set out in this clause 15 shall be Your sole remedy for any breach of warranty.

16 Limitation of Liability

16.1 Nothing in this MSA or any Contract shall exclude or limit Our liability for (i) fraud or other criminal act, (ii) personal injury or death caused by the negligence of Our employees in connection with the performance of their duties hereunder or by defects in any Deliverables, Digital Products, Third Party Software or Services supplied pursuant to a Contract, or (iii) any other liability that cannot be excluded by law.

16.2 Subject to clause 16.1, We shall not be liable for any damages resulting from: (a) loss of, damage to or corruption of data, (b) loss of or damage to or corruption of Customer Content, (c) loss of use, (d) lost profits, (e) loss of revenue, (f) loss of goodwill, (g) loss of reputation or (h) any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen. We will, in the event of loss of, damage to or corruption of data arising directly from any act or omission of Ours under this Agreement, be liable for the cost of restoring such data from backups where available, but will not be liable for the value of any lost or corrupted data that could not be so recovered.

16.3 Except as provided in clause 16.1 and in clause 16.2, Our maximum aggregate liability to You for any cause whatsoever shall be for direct costs and damages only and will be limited to a sum equivalent to 125% of the aggregate of the Fees paid and payable by You under the Contract that is the subject of Your claim during the Contract Year in which the issue giving rise to Your claim arose.

16.4 We hereby exclude, to the fullest extent permitted by law, all liability that We have not expressly accepted in this MSA or any Contract. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this clause 16, 'We ' includes Our employees, sub-contractors and suppliers who shall therefore have the benefit of the limits and exclusion s of liability set out in this clause 16 in terms of the Contracts (Rights of Third Parties) Act 1999.

- 16.5 No action, regardless of form, arising out of transactions occurring under or contemplated under a Contract may be brought by either party more than two (2) years after the cause of action has accrued.
- 16.6 Save as provided in clause 16.7, You shall have no remedy in respect of any representation (whether written or oral) made to You upon which You relied in entering into a Contract ('Misrepresentation') and We shall have no liability to You other than pursuant to the express terms of a Contract. In particular, You understand that the contents of any proposal or sales presentation that We may have made to You shall not be a binding part of Our commitment to You unless they are also incorporated in a Quotation or Specification.
- 16.7 Nothing in a Contract shall exclude or limit Our liability for any Misrepresentation made by Us fraudulently.

17 Duration and Termination

- 17.1 The MSA shall become effective on the date first set out above and shall continue unless and until terminated in accordance with the provisions of clauses 17.2 and 17.3 or a continuous period of 24 months has passed without any Contracts in force, after which this MSA shall automatically expire without notice.
- 17.2 Each Contract shall become effective on its Commencement Date, and shall continue for its Minimum Term or its Fixed Term, unless terminated earlier in accordance with the provisions of clause 17.3. or in the case of a Contract for Services and Deliverables, if the Deliverables set out in the Contract have been provided and Accepted (if Acceptance is specified in the Contract) and paid for in full, at which time the relevant Contract will expire.
- 17.3 Either party may terminate the MSA or any Contract at any time with immediate effect:
- a) on giving written notice to the other party if it commits any material breach of any term of the MSA or a Contract, and in the case of a breach which is reasonably capable of remedy, fails to remedy that breach to the reasonable satisfaction of the initiating party within thirty (30) days of a written request to remedy the same; or
 - b) if the other party shall have a receiver or administrative receiver appointed over it or any of its undertaking or assets, or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity shall assume all of the liabilities of it), or a court of competent jurisdiction shall make an order to that effect, or if it shall become subject to an administration order, or shall enter into any voluntary arrangement with its creditors, or shall cease or threaten to cease to carry on its business, or if any substantially similar event shall take place under the laws of another jurisdiction.
- 17.4 The termination or expiry of this MSA or any Contract for whatever reasons shall be without prejudice to any other rights or remedies a party may be entitled to under law and shall not affect the respective rights and liabilities of the parties accrued prior to such termination.

18 Customer Content

- 18.1 You hereby represent that You are the owner or licensee of Customer Content and that You have all necessary rights, licences and permits required to upload Customer Content to the Digital Product or Deliverable for the purpose agreed in the applicable Contract.

- 18.2 We shall have no liability in respect of Customer Content, or in respect of anything uploaded by Your Users. You are solely responsible for ensuring the accuracy, completeness, appropriateness and fitness for purpose of anything made or used by Your Users at any time.
- 18.3 We shall have no liability to monitor, limit or otherwise control the way in which You grant access to the Digital Product or Deliverable, and You agree that You are solely responsible for managing such access and enforcing any restrictions You may wish to place upon such access.
- 18.4 We do not monitor, review, or moderate Customer Content uploaded to or created within the Digital Product or Deliverable. You acknowledge and agree that You are solely responsible for ensuring that all Customer Content complies with applicable laws and regulations, including but not limited to the Online Safety Act 2023. This includes but is not limited to: (a) implementing appropriate terms of service and acceptable use policies for Your end users; (b) establishing user reporting mechanisms for illegal or harmful content; (c) conducting any required risk assessments; (d) implementing age verification or assurance measures where required; and (e) handling all user complaints regarding content. However, We reserve the right, at Our sole discretion, to remove or disable access to any Customer Content, and/or suspend or terminate Your access to the Digital Product or Deliverable, if We become aware of or suspect that such content is illegal, harmful, or in breach of this MSA. You shall indemnify and hold Us harmless from any claims, losses, or liabilities arising from Your failure to comply with such laws and regulations in relation to Customer Content.
- 18.5 You undertake to keep all usernames, passwords and other access details relating to Digital Product's or Deliverable's administrative functions and configuration tasks confidential and to ensure that Your Users do the same.
- 18.6 It is a condition of the Contract that You shall ensure that no Customer Content includes any material that:
- a) is false or misleading;
 - b) is defamatory;
 - c) invades another's privacy;
 - d) is obscene, or offensive;
 - e) infringes another's rights, including any intellectual property rights;
 - f) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; or
 - g) contains any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.
- 18.7 You agree that We have the right (but not the obligation) to examine Customer Content from time to time to confirm Your compliance with the provisions of clause 18.6. In the event We identify an item of Customer Content that does not comply, We may:
- a) delete such offending Customer Content; and/or
 - b) suspend access to the Digital Product for some or all of Your Users; and/or

- c) co-operate with law enforcement authorities to prosecute Users who have uploaded or created unlawful Content; and/or
- d) terminate the Contract immediately for Your material breach.

19 Intellectual Property

- 19.1 We are the owner or licensee of any and all patents, copyright, trade secrets, trademarks and any other intellectual property rights that subsist in the Digital Products. For the avoidance of doubt, title and all intellectual property rights to any design, new software, new protocol, new interface, enhancement, update, derivative works, revised screen text or any other items that We create for You shall remain vested in Us or Our licensors. Any rights not expressly granted herein are reserved to Us.
- 19.2 You are the owner or licensee of the patents, copyrights, trade secrets, trademarks and any other intellectual property rights which subsist in the Customer Content. Title to the Customer Content shall remain vested in You or Your licensors. You hereby grant to Us a non-exclusive, irrevocable licence to use the Customer Content solely for the purpose of performing Our obligations under the applicable Contract.
- 19.3 You are the registered licensee of the Customer Third-Party Software. You hereby agree that We may access and use the Customer Third-Party Software on Your behalf, solely for the purpose of performing Our obligations under the corresponding Contract and You warrant that You have all necessary rights, permissions and licences to permit Us to do so.
- 19.4 You shall defend, indemnify and hold Us harmless from and against any liability, loss, damage, cost and expense (including without limitation reasonable legal fees) incurred as a result of any claim brought against Us alleging that the Customer Content and the normal use of Your Customer Content in accordance with the Contract infringes any intellectual property right belonging to a third party ('IP Claim').
- 19.5 We are the registered licensee of Third-Party Software that We have supplied. We access and use the Third-Party Software on Your behalf, solely for the purpose of performing Our obligations under the corresponding Contract.
- 19.6 Upon Your payment of the corresponding Fees in full, We shall grant to You a non-exclusive, perpetual, irrevocable, world-wide, royalty-free right to use the Deliverables, including for the purpose of maintaining and updating the Deliverables.
- 19.7 We shall defend at Our own expense any claim brought against You alleging that the normal use of the Digital Products or any Deliverables, in accordance with the Contract infringes any intellectual property right belonging to a third party ('IP Claim') and We shall pay all damages awarded or agreed to be paid to any third party in settlement of an IP Claim provided that You:
 - a) promptly furnish Us with written notice of the IP Claim upon becoming aware of the same;
 - b) make no admissions or settlements without Our prior written consent;
 - c) act in accordance with Our reasonable instructions and provide Us with reasonable assistance in respect of the IP Claim; and
 - d) give to Us the sole authority to defend or settle the IP Claim.

- 19.8 We shall reimburse You for Your reasonable costs incurred in complying with the provisions of clause 19.7.
- 19.9 If in Our reasonable opinion a Digital Product or a Deliverable is or may become the subject of an IP Claim then We shall either:
- a) obtain for You the right to continue using the Digital Product or Deliverable which is the subject of the IP Claim;
 - b) replace or modify the Digital Product or Deliverable which is the subject of the IP Claim so it becomes non-infringing; or
 - c) if such remedies in (a) and/or (b) above are not in Our opinion reasonably available, then You shall return the relevant Deliverable or cease use of the relevant Digital Product which is or may become the subject of an IP Claim and We shall refund to You the corresponding portion of the Fees.
- 19.10 We shall have no liability for any IP claim resulting from the combination of a Deliverable or a Digital Product with other products that were neither supplied nor combined with them by Us, or if the same results from any breach of Your obligations under a Contract.
- 19.11 This clause 19 states Our entire obligation and liability and Your sole remedy in respect of any infringement or alleged infringement of any intellectual property rights arising from Your acquisition, possession or use of a Digital Product or Deliverable. We hereby exclude all other obligations and liabilities in relation to infringement or alleged infringement of the intellectual property rights of any person to the fullest extent permitted by law.

20 Confidentiality

- 20.1 Confidential Information shall be defined as any information (whether disclosed in oral, written or electronic form) belonging or relating to a party's business affairs or activities and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) may reasonably be supposed to be confidential in the circumstances.
- 20.2 Each party undertakes that for a period of three (3) years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under a Contract. In any event, each party hereby agrees that it shall treat the other's Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature, disclosing such Confidential Information only to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of a Contract, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this clause 20.
- 20.3 The provisions of clause 20.2 shall not apply to:
- a) any information in the public domain otherwise than by breach of a Contract;
 - b) information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party, as evidenced by written documents;

- c) information lawfully obtained without restriction from a third party, as evidenced by written documents; and
- d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavours to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.

20.4 We may publicise Our involvement with You (identifying You as a customer of Ours and the nature of Services We provide to You) without Your prior written consent.

21 Data Protection

The terms 'Personal Data', 'Data Controller', 'Data Processor', 'Personal Data Breach', 'Data Protection Officer', 'Data Subject' and 'process' (in the context of usage of Personal Data) shall have the meanings given to them in the Data Protection Legislation. 'Approved Countries' means the European Economic Area and any territory which is subject to a current finding by the relevant authority under applicable Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals, and 'Standard Contractual Clauses' or 'SCCs' means the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to processors established in third countries other than Approved Countries.

- 21.1 Where either of Us receives Personal Data for processing, before commencing any processing, we each shall agree with the Data Controller the following: (a) the subject-matter and duration of the processing; (b) the nature and purpose of the processing; (c) the type of Personal Data and categories of Data Subjects involved; (d) the obligations and rights of the controller and processor.
- 21.2 The Parties acknowledge that for the purpose of this MSA and a Contract, in accordance with the Data Protection Legislation, You are the Data Controller, We are the Data Processor, [and any subcontractor or third party engaged by Us to process the Data Controller's data is the Data Subprocessor]. For the avoidance of doubt, We process Personal Data only on Your documented instructions as Data Controller and We have no independent right to determine the purposes or means of processing such Personal Data.
- 21.3 You acknowledge and agree that You are solely responsible for the Data Controller responsibilities under the Data Protection Legislation and you warrant that:
 - a) You will at all times comply with the Data Protection Legislation; and
 - b) Any instructions You give to Us in relation to your Personal Data will not breach any Data Protection Legislation; and
 - c) You will at all times keep Us posted for any changes to Your GDPR public policies, such as but not limited to cookie policies and privacy policies ('Your Policies').
- 21.4 Under no circumstance, a feature request from You to Us in connection with Your Policies implies Our duty of updating Your Policies accordingly and therefore under We shall not be liable for anything in relation to updating Your Policies unless You explicitly request Us and We agree to do so, in accordance with the terms of this MSA.

21.5 As a Data Processor We will:

- a) act solely on the instructions of the Data Controller;
- b) ensure that, (i) the appropriate technical and organisational measures are in place to comply with the Data Protection Legislation and protect the rights of the Data Subjects, and (ii) persons authorised to access the Personal Data are subject to appropriate confidentiality undertakings;
- c) not transfer the Personal Data outside of the Approved Countries, or to any third party without the Data Controller's consent and, if required, the parties will enter into the applicable Standard Contractual Clauses ('SCCs') and/or the UK IDTA prior to the transfer of Personal Data and take all other actions required to legitimise the transfer;
- d) give the Data Controller reasonable assistance and information in relation to either parties compliance with the Data Protection Legislation;
- e) at the end of the processing, (i) either delete or return the Personal Data to the Data Controller, and (ii) delete copies of the Personal Data unless subject to a legal obligation to store the copies;
- f) not engage another processor of the Personal Data without the prior written consent of the Data Controller.

21.6 We shall maintain and keep up to date a list detailing the location of all data processed (including Personal Data) and, if applicable, details of any third-party sub-contractors or third parties with whom We have shared any data.

22 Publicity

You agree that We may show the Deliverables to potential new customers as examples of Our work, and to the extent that any Customer Content are incorporated in such Deliverables, You hereby grant Us a perpetual, royalty free licence to use them for this purpose only.

23 Compliance

We shall comply at all times with, and shall procure that Our employees, sub-contractors and agents at all times comply with, all applicable laws in Our provision of the Services and, in complying with Our obligations under this MSA. Without prejudice to the generality of the foregoing, We shall comply with all applicable laws relating to modern slavery, data protection, health and safety, the environment and bribery and corruption.

24 Assignment

You may not assign a Contract or otherwise transfer any rights or obligations under a Contract except with Our prior written consent.

25 Force Majeure

Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under a Contract shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

26 Notices

All notices made pursuant to the MSA or a Contract must be made in writing. Unless expressly stated otherwise in this MSA, notice by email is not acceptable and any written notice shall be sent postage prepaid by registered or recorded mail or reputable courier service, addressed to the other party's address stated above and shall be marked for the attention of the directors. Unless otherwise provided in a Contract, all notices shall be deemed as given on the day of their receipt by the receiving party.

27 Entire Agreement

Each Contract constitutes the entire agreement between the parties with respect to its subject matter and shall supersede all previous representations, agreements and other communications between the parties, both oral and written. In particular (but not by way of limitation), no proposal or sales presentation shall be considered to be part of any Contract between You and Us, and You are encouraged to ensure that each Quotation contains all of the details of the Deliverables You require.

28 Law & Jurisdiction

- 28.1 In the event of any dispute arising under the MSA or any Contract the parties will first attempt to resolve the dispute by escalating it to the senior management or board directors of their respective companies, and providing such individuals with the support and information they might reasonably need to identify a mutually acceptable resolution.
- 28.2 If internal resolution is not successful, the parties will attempt to settle their dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be appointed by CEDR. No party may commence court proceedings in respect of any dispute arising out of the MSA or any Contract (other than a simple request for payment of an undisputed invoice) until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 28.3 Subject to the provisions of clause 28.1 and clause 28.2, each party hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes of whatever nature arising out of or relating to the MSA or any Contract.
- 28.4 Notwithstanding the provisions of clause 28.1, nothing in the MSA or any Contract shall limit either party's right to seek injunctive relief.
- 28.5 The MSA and all Contracts hereunder shall be governed by English law.

29 Survival

The following clauses shall continue to be in effect after the termination or expiration of the MSA or the relevant 1, 2.3, 2.5, 2.6, 12, 16, 17.3, 17.4, 19, 26, 27, 28, 29, 30.

30 General

If any provision of the MSA or a Contract is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, the Parties agree that the remaining provisions of the relevant Contract shall not be affected thereby and shall remain valid and enforceable. No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto. No single or partial exercise of any power or right by either party shall preclude any other or



further exercise thereof or the exercise of any such power or right under a Contract. No Contract may be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of Us and You. A person who is not a party to a Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of it except as expressly set out herein, but this does not affect any right or remedy that such third party may have without reference to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS WHEREOF, the parties hereto have executed the MSA through their duly authorised representatives on the dates set forth below:

Signed for and on behalf of Us.

Signed for and on behalf of You.

Signature

Signature

Name

Name

Title

Title

Date

Date



Appendix 1 Digital Products

30.1 This Appendix sets out our Digital Products and the additional terms and conditions applying to the supply of each DP.

1 AUDIT SYSTEM

1.1 General Provisions

All the capitalised words in this Section shall have the meaning set out in the MSA and the following capitalised words in this Section shall have the meaning below when used in this Appendix 1. The Audit System is offered in two configurations:

Standard Audit System and Advanced Audit System, as defined in Sections 1.2 and 1.3 respectively. Unless otherwise specified in a Contract, references to "Audit System" shall include both configurations where the context permits.

1.2 1.2 Standard Audit System

'Audit System' or 'Standard Audit System'	means Our Digital Product for the collection of organisation-based audit data and its subsequent reporting, as described in more detail on Our website here: https://www.phew.org.uk/digital-products/audit-system/
'Audit' or 'Standard Audit'	means an audit created by You within the Standard Audit System.
'Administrator Activities'	means all the activities that an Administrator User can carry out, such as granting permission to conduct Audits, create and manage Audit System's projects, assign Audits to Respondents.
'License Units'	means each individual response to an Audit.
'Respondent'	means an Authorised User who can receive and respond to an Audit.
'Respondents' Leader'	means an Authorised User who can receive and respond to an Audit and can manage the addition, update and removal of other Respondents in their organisation and the assignment of those Respondents to Audit(s).
'Access Control'	In the Standard Audit System, access rights are organisation-based by default. Users within an organisation automatically have access to their organisation's audits. More granular controls are available, with access typically following organisational boundaries and the ability to remove specific user access where required.

1.3 1.3 Advanced Audit System

The following definitions apply to the Advanced Audit System configuration, which is an optional enhanced version of the Audit System designed for processing sensitive personal data:

'Advanced Audit System'	means the enhanced configuration of Our Audit System with additional security features including encryption at rest, mandatory Multi-Factor
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	Authentication, and restricted data access controls, designed for processing sensitive personal data. Further described at: https://www.phew.org.uk/digital-products/advanced-audit-system/
'Advanced Audit'	means an audit created within the Advanced Audit System with enhanced security measures applied.
'Encryption at Rest'	means the encryption of data stored in the Advanced Audit System database using AES-256 symmetric encryption with Encrypt-then-MAC authentication scheme (AES-256-CBC cipher mode with HMAC-SHA256 authentication). The following data is encrypted at rest: - Organisation data - Respondent user data - Administrator user data - All audit responses for Advanced Audits - Uploaded file evidence - Audit titles and summaries that may contain sensitive information
'Multi-Factor Authentication' or 'MFA'	means the mandatory SMS-based authentication required for all Administrator Users and Respondents before accessing the Audit System when Advanced Audits are enabled.
'Explicit Access Provisioning'	means the requirement that access to specific Advanced Audits must be specifically granted by a Super- Administrator User to named individuals. Users are only granted access to specific Advanced Audits when permissions are explicitly assigned to them.
'Administrator Activities' (Advanced)	means all the activities that an Administrator User can carry out in the Advanced Audit System, such as explicitly provisioning access to specific Advanced Audits to named Authorised Users who have completed Multi-Factor Authentication, creating and managing Advanced Audit projects with appropriate security classifications, and assigning Advanced Audits to Respondents.
'License Units' (Advanced)	means each individual response to an Advanced Audit which requires encryption and secure access controls.
'Respondent' (Advanced)	means an Authorised User who has been explicitly granted access to an Advanced Audit, completed Multi-Factor Authentication, and responds to the Advanced Audit.
'Respondents' Leader' (Advanced)	means a Respondent who has been explicitly granted access to an assigned Advanced Audit, completed Multi-Factor Authentication, and can provide required information and evidence during the Advanced Audit process.
'System Administrator(s) Activities' (Advanced)	means all the activities to be carried out by System Administrators for the full control over the Advanced Audit System, including configuration of security settings, explicit provisioning of user access to specific Advanced Audits, creation of Advanced Audit templates, assignment and management of Authorised Users with Multi-Factor Authentication requirements, and generating Advanced Audit reports with Multi-Factor Authentication. Confirmation of Multi-Factor Authentication completion;

Access Control:	In the Advanced Audit System, access rights must be explicitly provisioned. Users are only granted access to specific Advanced Audits when permissions are explicitly assigned to them by a System Administrator(s) User. This ensures tighter control over who can view and manage sensitive audit data.
Export Restrictions:	Advanced Audits have enhanced export security. Printing is explicitly disabled. Export functionality requires multi-factor authentication and additional security Authorisation to complete the export.
Data Sharing:	Where multiple departments use the same Advanced Audit System, a data sharing agreement must be in place. System Administrators can only access Advanced Audits for which they have been explicitly granted access, but those with cross-departmental access can view audits and responses across departments.

2 Learning Management System

2.1 All the capitalised words in this Section shall have the meaning set out in the MSA and the following capitalised words in this Section 2 shall have the meaning below when used in this Appendix 1:

'Learning Management System' or 'LMS'	means Our Digital Product for the provision of booking courses and access to Your learning resources to individual learners, as described in more detail on Our website here: https://www.phew.org.uk/digital-products/learning-management-system/
'Administrator Activities'	means all the activities that an Administrator User can carry out for the purpose of assisting in the overall management of the LMS, such as create, edit and manage courses, enrol delegates, track progress, granting permission to conduct Audits, create and manage Audit System's projects, assign Audits to Respondents.
'Delegates'	means the Authorised Users who can book an unlimited number of courses [within the courses assigned to them by the Administrator Users] and attend the courses, complete training modules, interact with course materials, and view their progress.

'Delegates' Manager'	means the Authorised User who can book more Delegates onto a course within the LMS, view the Delegates' history and progress.
'eLearning course'	means a pre-recorded, self-guided course provided via the LMS
'eLearning module'	means an optional module provided via LMS, which integrate all the bespoke online courses, booking tool, learning histories, resources and certificates, conducted via the LMS.
'License Units'	means each individual booking of a face-to- face or online course for a single learning resource (eLearning).
'System Administrator(s) Activities'	means all the activities in connection with full control and authority over the LMS, such as configuring the system settings, managing the Authorised Users Accounts, creating and organising courses, generating reports, performing all the administrative tasks within LMS or delegating them to the Administrator User.

3 Websites

3.1 All the capitalised words in this Section shall have the meaning set out in the MSA and the following capitalised words in this Section 5 shall have the meaning below when used in this Appendix All the capitalised words in this Section shall have the meaning set out in the MSA and this Appendix 1:

'CMS'	means Our WordPress open-source Content Management System, which We [may] use for developing a Website.
'Administrator Activities'	means all the activities which an Administrator User is permitted by You or by System Administrator(s) User to carry out with regard to the Website, such as managing content, updating pages, moderating User-generated content, and assisting in the Website administration tasks.
'Enhanced Accessibility'	means, in respect of a Web Site, that the Web Site will comply with the accessibility requirements of the Web Content Accessibility Guidelines (WCAG) 2.0, as published by the World Wide Web Consortium (W3C).
'License Units'	means each access to the.

Newsletter Subscriber	means a Website Public Users who register him/herself for opting to receive updates, newsletters, or other forms of communication from the website.
'Website Public Users'	means visitors of the Website, who o can access to, and interact with, certain website's features and information, submit forms, participate in forums, and utilising interactive tools.
'System Administrator(s) Activities'	means all the activities which a System Administrator(s) User is permitted by You to carry out in connection to fully control and govern the Website, such as accessing and interacting with the website's features, by accessing information, submitting forms, participating in forums, and utilising interactive tools.
'WordPress Framework'	means Our proprietary suite of tools and facilities which WE have developed to make available specific enhanced features and functions for Website.
'WordPress Framework License Unit'	means a single, perpetual license to use an individual Website which We developed for You.

- 3.2 We shall use Our reasonable endeavours to ensure that the Web Site meets the minimum Enhanced Accessibility requirements. If You have specific accessibility requirements in addition to those required for Enhanced Accessibility, these must be set out clearly in the Specification.

Appendix 2 Support

This Appendix sets out the details of Our Support, including the means by which You may access Support, and Our target response time. All capitalised terms in this Appendix shall have the meanings defined for them in the MSA unless expressly stated otherwise.

1 Definitions

The following capitalised terms shall have the meanings below when used in this Appendix:

'Business Days'	means the days from Monday to Friday excluding English public holidays.
'Business Hours'	means the hours (in English time) from 09:00 to 17:00, on any Business Day.
'Issue'	means the failure of a Deliverable or a Digital Product to comply with a reasonable interpretation of its Specification, or a problem with Your ability to access a Digital Product or a Deliverable hosted by Us.
'Issue Notification'	means Your notification to Us of an Issue in accordance with the process set out in section 2.4 of this Appendix, and containing the information set out in section 2.5 of this Appendix.
'Out of Hours Support'	means the Support provided outside the Business Hours with regard to Critical Issues, as defined in the Issue Categorisation table of clause
'Support'	means those Services further described within this Appendix, relating to the collection and evaluation of data relating to Issues, establishing work-arounds and fixes for such Issues, and providing help and assistance to Your System Administrator(s) and Administrator Users by email, telephone and online chat.
'Support Minute'	means the unit of time of Support You have purchased as set out in the relevant Contract.
'Support Request'	means the submission of ticket to our Support desk in accordance with the terms of the MSA and this Appendix 2.
'Supported Deliverable'	means a Deliverable for which You have purchased a number of Support Minutes as set out in the relevant Contract.

2 Supply of Support

- 2.1 We shall provide Support during Business Hours only, in respect of the Digital Products and Supported Deliverables for which You have Support Minutes available.
- 2.2 You acknowledge and agree that:

- a) Except as provided in Clause 2.3, You will refer to Our Support desk to request Support solely via System Administrator(s) and Administrator Users who have been trained directly by Us; and
- b) You will refer to Our Support desk to request Support only after You have exhausted all self-addressed means, including previous training notes, training recording, knowledge academy, 'How To' articles; and
- c) Your use of Our Support for Digital Products is subject to Our Fair Use Policy.

2.3 Subject to Clause 2.2. (b) and, with regard to Support in respect of Digital Products and Supported Deliverables other than Website, in the event of a change of Your personnel so that a trained System Administrator(s) User is no longer available for the purpose of Clause 2.2.a), We will provide an ex-gratia period of Support for the lesser of:

- a) the time spent training a new member of Your staff to enable such member to perform the activities set out in this Agreement and clause 2.2. (a), or
- b) thirty (30) days after your Support's request in accordance with Clause 2.4, marked 'pre-training support'.

2.4 Subject to clause 2.1, 2.2. and 2.3 (b), You may request Support by:

- a) email at support@phew.org.uk; or
- b) telephone at 01234 779050.

2.5 Each Issue Notification shall include the following information:

- a) Your organisation name; and
- b) the name of the System Administrator(s) and Administrator User reporting the Issue; and
- c) details of the Issue, including full screenshots; and
- d) details of the attempts You made to resolve the issue before the Support request.

2.6 You acknowledge and agree that Your Support Minutes are subject to clause 2.1 and for the exclusive use of:

- a) Phew! monthly checks on stability, performance and security;
- b) issues introduced following Acceptance of Deliverable;
- c) for minor change requests agreed in writing by all parties, subject to Support Minutes allowance;
- d) additional 3rd party checks, like Accessibility monitoring management of analytics etc.

2.7 You shall use Your reasonable endeavours to provide Us with any further information or data that We might reasonably require in order to correctly diagnose and resolve an Issue. You agree that We cannot begin the process of Issue resolution until We have been able to replicate the Issue, and You shall provide Us with all reasonable assistance required to enable Us to do so. You accept that it may not be possible for

Us to resolve any specific Issue until it can be discussed with one of Your System Administrator(s) Users.

2.8 We shall use Our reasonable endeavours to respond to each Issue Notification within 4 Business Hours.

2.9 We shall notify Your System Administrator(s) Users by email when We believe that the Issue has been resolved. Unless We receive notification from You to the contrary within two (2) Business Days of such notification, the Issue shall then be considered to be closed.

3 Fair Use Policy

3.1 If Your usage is excessive or unreasonable and, in any case, where Your usage is higher than 20% of the value of a Contract, We may advise You that Your usage is in breach of Our Fair Use Policy and ask You to stop or change Your usage so that is within Our Fair Use Policy.

3.2 If Your excessive or unreasonable usage continues after Our request to stop or change such usage, We may either charge You for the excessive or unreasonable element of Your usage subject to the then applicable Fees or suspend or restrict Your use of the Support.

4 Issue Categorisation

4.1 We shall categorise each Issue in accordance with the following definitions:

Category	Description
Critical	Critical production issue that severely impacts your use of the service. The situation halts your business operations, and no procedural workaround exists. Service is down or unavailable. Data corrupted or lost, and must be restored from backup. A critical documented feature/function is not available. Severity 1 issues require the customer to have dedicated resources available to work on the issue on an ongoing basis with Phew.
High	Service is operational but highly degraded performance to the point of major impact on usage. Important features of the Software as a Service offering are unavailable with no workaround; however, operations can continue in a restricted fashion.
Medium	There is a partial, non-critical loss of use of the service with a medium-to-low impact on your business, but your business continues to function. A short-term workaround is available, but not scalable.

Low	Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug affecting a small number of users. Acceptable workaround available.
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4.2 Exclusions from Support

4.3 We shall be under no obligation to provide Support in respect of:

- a) Any Support Request which is not compliant with Clause 2 'Supply of Support';
- b) an Issue resulting from any modifications or customisation of a Supported Deliverable not made by Us, which shall include but not be limited to changes in any component of the Supported Deliverable;
- c) incorrect or unauthorised use of a Digital Product or Supported Deliverable or operator error where such use or operation is not in accordance with any documentation or training provided by Us;
- d) any programs used in conjunction with a Digital Product or Supported Deliverable;
- e) faults in the computer hardware on which a Supported Deliverable is operating, if We are not providing the hosting for such Supported Deliverable; or
- f) Supported Deliverables for which We are not providing hosting, and to which You are unable to grant Us remote access.

4.4 We shall notify Your System Administrator(s) and Administrator Users by email as soon as We are aware that any Issue falls into one of the exclusions set out in clause 4.1 of this Appendix.

5 Support Minute Usage

5.1 When providing Support in respect of Supported Deliverables, We shall begin accruing Support Minutes upon receipt of Your Issue Notification.

5.2 Support Minutes shall be accrued by Our personnel for time spent liaising with You to identify further details of an Issue, investigating the cause and resolution of an Issue, implementing and communicating any such resolution, and responding to Your enquiries and requests.

5.3 We shall upon request provide you with an estimate on Support time required, however You agree that such estimate is a mere indication and that We can go over the estimated time, if needed.

6 Additional Requirements for Advanced Audit System Support:

6.1 Support requests relating to Advanced Audits may require additional security verification before We can access Your data to diagnose Issues, including but not limited to:

- a) Verification of the identity of the requesting System Administrator(s) or Administrator User;
- b) Confirmation of Multi-Factor Authentication completion;
- c) Authorisation to access the specific Advanced Audit in question;

- 6.2 Certain Support activities relating to Advanced Audits may require multi- factor authentication by the requesting System Administrator(s) or Administrator User;
- 6.3 We may decline to provide certain types of Support if doing so would compromise the security features of the Advanced Audit System, such as requests to disable encryption, bypass Multi- Factor Authentication, or enable printing functionality;
- 6.4 Support for Advanced Audits is provided only to System Administrators and Administrator Users who have completed the additional security training required under Clause 7.3(b) of this MSA.

Appendix 3 Hosting

This Appendix sets out the details of Our Hosting Services for Your Deliverable.

1 Definition

1.1 The following capitalised terms shall have the meanings below when used in this Appendix:

'Availability '	means the amount of time for which the Hosted Deliverable is available to users over a twelve (12) month period, calculated as a percentage of all available hours during that period.
'Business Days '	means the days from Monday to Friday excluding English public holidays.
'Business Hours '	means the hours (in English time) from 09:00 to 17:00, on any Business Day.
'Hosted Deliverable '	means the Deliverable to be hosted by Us, as set out in the applicable Contract.

2 Provision of Hosting Services

- 2.1 We agree to host the Hosted Deliverable on Our computer facilities or those of Our subcontractors for the corresponding Services Fee.
- 2.2 We do not warrant that the Hosting Services will be uninterrupted or error-free.
- 2.3 We reserve the right to move or suspend access to the Hosted Deliverable for short periods of time to allow Us to carry out maintenance or repair to Our servers. We will notify You of planned maintenance by email at least one (1) Business Day in advance.
- 2.4 Please be aware that We occasionally perform emergency maintenance or repairs, when it will not be possible to notify You in advance.
- 2.5 Subject to the provisions of the preceding paragraphs, We shall use Our reasonable endeavours to ensure the Availability.
- 2.6 Whilst We would make all reasonable efforts in the unlikely event of any corruption or hardware failure, We cannot guarantee to be able to replace lost data. This includes loss of data resulting from delays, non-deliveries, wrong delivery, and any and all Hosting Service interruptions caused by Us or Our subcontractors.
- 2.7 Following the termination or expiry of the Hosting Services, We reserve the right to deactivate access to the Hosted Deliverable immediately and to delete the Hosted Deliverable after two (2) calendar months.