

Terms and Conditions

This Agreement (comprising those documents set out in the Key Terms) contains the whole agreement between the parties relating to its subject matter (being the supply by Supplier of website support and maintenance services) and supersedes any prior agreements, representations or understandings between the parties unless expressly incorporated by reference in this Agreement. The order of precedence in which the documents listed in the Key Terms shall apply is (unless otherwise stated in the Agreement and highest importance first): (1) the Key Terms and (2) these General Terms and Conditions.

1. Definitions and interpretation

1.1 Words shall have the meanings given to them in this Agreement, including without limitation as set out below:

Bribery Laws: means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;

Business Day: means a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the City of London;

Charges: means the Fees payable and other amounts payable under this Agreement for the Services, as set out in the Key Terms;

Confidential Information: means any and all confidential information (whether in oral, written or electronic form) given including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and customers, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that party;

Consumer Prices Index or CPI: means the Consumer Prices Index as published by the UK Office for National Statistics;

Content: means all text, graphics, logos, photographs, images, moving images (including video), sound, illustrations, software, data, calculations, algorithms, methods, information and other material and related documentation featured, displayed or used in or in relation to the Website (including without limitation any Submissions);

Customer Content: means any Content provided or made available by Customer;

Force Majeure: means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including war, revolution, terrorism, riot or civil commotion; strikes, lock outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire; flood, natural disaster, or adverse weather conditions. Force Majeure does not include, without limitation, inability to pay, mechanical difficulties, shortage or increase of price of raw materials, over-

commitment or market or other circumstances which may make the terms of this Agreement unattractive to a party;

General Terms and Conditions: means the general terms and conditions forming part of this Agreement;

Intellectual Property Rights: means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future; and
- (e) wherever existing;

Key Terms: means the key terms pages forming part of this Agreement;

Service Levels: means the service levels set out in [clause 4 below];

Support Hours: means from 9am to 5pm GMT/BST on Business Days only;

Services: means those website support and maintenance services agreed to be provided by Supplier to Customer in the Key Terms and set out in these General Terms and Conditions;

Submissions: means any user or other third-party generated Content emailed or otherwise externally submitted to the Website;

Third Party Content: means any Content owned or licensed by a third party either before or during the term of this Agreement;

VAT: means United Kingdom value added tax and any other tax imposed in substitution for it;

Website: means the website identified as 'the Website' in the Key Terms.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to paragraphs and sub-paragraphs are to paragraphs and sub-paragraphs of the Key Terms of this Agreement;
- 1.2.3 references to clauses and sub-clauses are to clauses and sub-clauses of the General Terms and Conditions of this Agreement;
- 1.2.4 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 1.2.5 'including' (or similar words) means including without limitation;

1.2.6 clause headings do not affect their interpretation; and

1.2.7 references to legislation (including any subsidiary legislation) include any modification or re-enactment thereof.

2. Duration

This Agreement will commence on the Commencement Date and will continue for a minimum period of 3 months (**Initial Term**) and thereafter may be terminated by either party on giving to the other party not less than 1 month's written notice such notice to expire on or after the end of the Initial Term, subject to earlier termination by either party in accordance with this Agreement.

3. Services

3.1 In consideration for the Charges, Supplier shall provide the Services (as set out in clause 2 and more particularly described in the remainder of these General Terms and Conditions) in respect of the Website to Customer from the Commencement Date and during the Support Hours, in accordance with the Service Levels.

3.2 The Services comprise:

3.2.1 bug fixing, errors and issues affecting the operation of the Website in line with the original specification;

3.2.2 online Website browser compatibility;

3.2.3 daily backup of the Website during the term of this Agreement. This backup will be delivered to Customer in full as soon as reasonably practicable after termination of this Agreement;

3.2.4 user support, questions and queries including remote support;

3.2.5 [M2E user support excluding upgrades. Technical issues will be passed to M2E for resolution;

3.2.6 minor content changes, not to exceed 40% of the content on a single page of the Website;

3.2.7 maintenance of test server environment; and

3.2.8 source code management through GitHub.

3.3 For the avoidance of doubt, the following matters are not included in the Services:

3.3.1 populating Website content with product data and pricing;

3.3.2 system and security patches;

3.3.3 Website re-design, re-alignment or redevelopment;

3.3.4 web and system upgrades;

3.3.5 paid software upgrades;

3.3.6 new module installations;

3.3.7 search engine optimisation services;

3.3.8 Website content generation and changes;

3.3.9 CMS design or integration including but not limited to blogs, shopping carts and web forums, which shall be the subject of a separate design agreement;

3.3.10 any support or maintenance services provided outside of the Support Hours.

3.4 The parties agree that Supplier is being appointed as an exclusive supplier of the Services.

4. Service Levels

4.1 Maintenance requests from Customer (which shall be made by telephone to 0116 326 1116 or email to helpdesk@williamscommerce.com) shall be logged by Supplier who shall prioritise and acknowledge all such requests and work in accordance with the service levels set out below:

Urgent: The Website is inoperable (or critical functions of the Website are inoperable, e.g. payment), i.e. anything that materially affects Customer processing transactions through the Website.

Response time: 30 minutes. **Resolution time:** 4 hours.

High: Important areas of the Website are inoperable (i.e. not working but not adversely affecting normal business process).

Response time: 1 hour. **Resolution time:** 8 hours.

Medium: The request is not critical and the Website can operate for normal business (i.e. minor fault, minimum impact).

Response time: 4 hours. **Resolution time:** 3 business days.

Low: All others (i.e. cosmetic changes).

Response time: 1 business day. **Resolution time:** 7 business days.

4.2 Maintenance requests received after 3.00pm GMT may not be completed until the next Business Day unless previously agreed in writing between the parties.

4.3 The parties shall act reasonably in resolving any disagreement regarding a priority level and shall if unable to agree otherwise, use the dispute resolution procedure set out in clause 23 of these General Terms and Conditions.

5. Customer's obligations in respect of the services

In order that Supplier may carry out the Services, Customer:

5.1 hereby authorises Supplier to access their Website hosting account;

5.2 shall provide Supplier with any active user name and/or password combinations for access to the relevant server using FTP, SSH and Admin Access and ensure that the necessary write permissions are in place on Customer's Website hosting account;

5.3 shall co-operate with Supplier's personnel in the diagnosis of any error or defect in the Website; and

5.4 shall make available to Supplier all reasonable information and facilities as Supplier requests.

6. Charges

6.1 The Charges for the Services (if applicable) are as set out in the Key Terms.

6.2 Customer shall pay to Supplier the Fees which shall be invoiced by Supplier and paid by Customer in accordance with clauses 9.3 and 9.4 of these General Terms and Conditions and otherwise in accordance with the Agreement.

6.3 The Charges may be increased by Supplier in accordance with clause 7 of these General Terms and Conditions.

7. Price variation

The parties agree that any fees and/or expenses comprising the Charges payable pursuant to this Agreement shall be reviewed annually by Supplier and may be increased by Supplier with effect from 1 January in each year following the first anniversary of this Agreement, and Supplier shall notify Customer of such increase at least 30 days prior to the effective date of increase.

8. Taxes and duties

8.1 All amounts due under this Agreement are exclusive of VAT, sales or other tax applicable which shall be paid in addition by Customer at the rate and in the manner for the time being prescribed by law.

9. Invoicing and payment

9.1 Supplier shall invoice Customer electronically to the email address notified by Customer in writing to Supplier for all sums due under this Agreement and otherwise in accordance with this clause 9.

9.2 Supplier shall invoice Customer monthly in advance in respect of the Services and Customer shall pay such sums in full within 30 days from the date of invoice.

9.3 Amounts payable to Supplier under this Agreement shall be paid by BACS or CHAPS transfer to Supplier's bank account specified in the relevant invoice.

10. Late payment - Interest chargeable

10.1 Where sums due hereunder are not paid in full by the due date, Supplier may, without limiting its other rights, charge simple interest on such sums in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 at the rate of 8% per annum above the Bank of England base rate which is current at the date the payment became overdue, accruing on a daily basis from the due date for payment until the date of actual payment.

10.2 Where sums due hereunder are not paid in full by the due date, Supplier may, without limiting its other rights, also charge a fixed sum in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 in addition to the interest referred to above.

10.3 If Customer wishes to dispute all or part of any invoice raised by Supplier, Customer shall notify Supplier in writing within 30 days of receipt of the invoice or, if later, within 14 days of the date on which Customer becomes aware, or ought reasonably to have been aware, of the circumstances giving rise to the dispute, such notification to include details of Customer's grounds for disputing the invoice.

10.4 If Customer fails to notify Supplier in accordance with clause 10.3 in respect of an invoice, Customer shall be precluded from challenging or disputing such invoice whether in whole or in part.

11. Supplier obligations

11.1 Each of Supplier and Customer shall comply with their respective designated responsibilities specified in this Agreement.

11.2 Supplier shall provide the Services:

11.2.1 with reasonable skill and care; and

11.2.2 at the times and in the manner specified in this Agreement.

12. Customer obligations

Customer shall respond promptly from time to time to the reasonable requests of Supplier for relevant information, instructions and assistance, including reasonable access to and cooperation by Customer personnel, to carry out the Services.

13. Warranties

13.1 Supplier warrants and represents to Customer that:

13.1.1 Supplier has the right, power and authority to enter into this Agreement and to perform the Services; and

13.1.2 Supplier will perform the Services with reasonable care and skill.

13.2 Customer acknowledges that Supplier is not liable for any loss or damage incurred by Customer to the extent that this results from any failure by Customer to discharge its obligations (or any of them) under this Agreement.

13.3 Customer warrants and represents to Supplier that:

13.3.1 Customer has the right, power and authority to enter into this Agreement and to receive the Services;

13.3.2 it has all rights and licences to provide the Customer Content and any Third Party Content (which Customer has agreed it will license) and to grant all necessary licences to Supplier to provide the Services;

13.3.3 any Customer Content will not:

(a) be fraudulent, defamatory, libellous, threatening or harassing, obscene, indecent or pornographic or otherwise contrary to law;

(b) infringe the Intellectual Property Rights of any third party; or

(c) contain any viruses or other harmful or intrusive programs or other code.

13.4 All other warranties and representations as to the Website, whether statutory or implied, are hereby expressly excluded to the fullest extent permitted by law.

13.5 Any warranties given by Supplier shall be subject to Customer using the Website in compliance with this Agreement.

14. Intellectual Property Rights

14.1 All Customer Content shall remain the property of Customer or its licensors, and Customer grants to Supplier a non-exclusive, worldwide, non-transferrable, royalty-free licence of such of Customer's Intellectual Property Rights in the Customer Content as are necessary for Supplier to fulfil its obligations under this

14.2 Except as expressly agreed in this clause 14 (Intellectual Property Rights), no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement.

14.3 Subject to the foregoing, Supplier shall be entitled to use in any way it deems fit any skills, techniques or know-how acquired or developed or used in connection with the Website provided always that such skills, techniques or know-how do not infringe the Customer's Intellectual Property Rights now or in the future or disclose or breach the confidentiality of the Customer's Confidential Information.

15. Intellectual Property Rights indemnity

15.1 Customer shall indemnify and keep indemnified, and hold harmless, Supplier against all claims, losses damages, costs and expenses incurred by Supplier as a result of or in connection with any action, demand or claim that use or possession of any Customer Content infringes the Intellectual Property Rights of any third party.

16. Limits on liability

16.1 Subject to the following sub-clauses, in no event shall the aggregate liability of any party to the other (whether in contract, tort (including negligence) or otherwise) and in respect of all claims, losses and damages arising under or in connection with this Agreement exceed:

16.1.1 the total amount of the Development Fee in respect of any one claim or series of related claims; and

16.1.2 provided that this shall be subject to an overall limit of an aggregate of twelve months' Fees (if higher) in respect of any and all claims, losses and damages arising under or in connection with this Agreement.

16.2 The above limits on liability shall apply in respect of any indemnities provided by either party under this Agreement, including without limitation to the indemnities under clause 15 (Intellectual Property Rights indemnity) and a party's liability for a breach of their obligations under clause 18 (Confidential Information).

16.3 Supplier's liability to Customer in contract, tort (including negligence), for misrepresentation (whether innocent or negligent), for breach of statutory duty or otherwise arising out of or in connection with this Agreement shall not extend to any loss of profits, business opportunity, goodwill, data, anticipated savings or any special, indirect or consequential loss or damage whatsoever, even if foreseeable or if Supplier has been advised of the possibility of such damage.

16.4 The parties agree that the limitations on liability in this Agreement are fundamental to the Agreement and are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under this Agreement. Customer acknowledges that Supplier would not provide any Services to Customer without such limitations.

16.5 Notwithstanding the above neither party excludes or limits any liability for:

16.5.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of a party or its employees; or

16.5.2 fraud or fraudulent misrepresentation; or

16.5.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

16.5.4 any other liability to the extent the same cannot be excluded or limited by law.

17. Force Majeure

17.1 A party will not be liable if delayed in or prevented from performing its obligations hereunder due to Force Majeure, provided that it:

17.1.1 promptly notifies the other of the Force Majeure event and its expected duration, and

17.1.2 uses reasonable endeavours to minimise the effects of that event.

17.2 If, due to Force Majeure, a party:

17.2.1 is unable to perform a material obligation, or

17.2.2 is delayed in or prevented from performing its obligations for a continuous period of more than 90 days,

the other party may, within a further 10 days terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect.

18. Confidential information

18.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.

18.2 Each party undertakes to:

18.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors (including Supplier personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and

18.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.

18.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.

18.4 The provisions of this clause shall not apply to information which:

18.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;

18.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;

18.4.3 is independently developed by the recipient, without access to or use of such information; or

18.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.

18.5 The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of 2 years thereafter.

19. Anti-bribery

19.1 Each party shall comply with applicable Bribery Laws, and each shall use all reasonable endeavours to ensure that:

19.1.1 all of that party's personnel;

19.1.2 all of that party's subcontractors; and

19.1.3 all others associated with that party,

involved in performing services for or on behalf of that party or otherwise involved with this Agreement so comply.

19.2 Without limitation to the above sub-clause:

19.2.1 neither party shall (directly or indirectly) offer or give or request, agree to receive or accept any bribe, other improper payment or advantage or bribe any UK or foreign public official in breach of applicable Bribery Laws; and

19.2.2 each party shall implement, maintain and enforce adequate procedures designed to prevent persons associated with that party engaging in conduct which contravenes the Bribery Act 2010.

19.3 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in the foregoing sub-clauses.

19.4 The expressions 'adequate procedures', 'associated with' and 'foreign public official' shall be construed in accordance with the Bribery Act 2010.

20. Termination

20.1 Either party may without prejudice to its other rights and remedies by notice in writing to the other party immediately terminate this Agreement if the other:

20.1.1 is in material or persistent breach of any of its obligations under this Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or

20.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.

20.2 Either party may without prejudice to its other rights and remedies by notice in writing to the other party immediately terminate this Agreement if that other party ceases carrying on business in the United Kingdom.

20.3 In the event of termination of this Agreement for any reason, each party shall within 14 days of such termination return (or, at the other party's option, destroy) all the other party's Confidential Information in its possession or under its control and all copies of such information.

21. Dispute resolution

If there is a dispute between the parties in relation to any matter under this Agreement, the parties' respective managing directors (or equivalent officers) shall meet to try to resolve any such dispute and if they fail to do so with a reasonable time the provisions of clause 25 (Governing Law and Jurisdiction) shall apply.

22. Compliance with law

Each party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties hereunder, its employees, agents and representatives will comply with all applicable laws and regulations, provided that neither party shall be liable for any breach to the extent that such breach is directly caused or contributed to by any act or default of the other party or its employees, agents and representatives.

23. Entire agreement

This Agreement contains the whole agreement between the parties relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly incorporated by reference in this Agreement. Each party acknowledges that it has not relied on, and shall have no remedy in respect of, any representation (whether innocent or negligent) made but not expressly embodied in this Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.

24. General

24.1 Whilst the Supplier will use reasonable endeavours to meet any milestone dates and times agreed between the parties, such dates and times are approximate only and time of performance of the Supplier's obligations is not of the essence under this Agreement.

24.2 Each party is responsible for its legal and other costs in relation to the preparation and performance of this Agreement.

24.3 Provisions which by their terms or intent are to survive termination of this Agreement will do so.

24.4 The parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.

24.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. However, this does not affect any rights or remedy of such a person that exists or is available apart from that Act.

24.6 No party may assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the other's prior written consent or except as expressly permitted in this Agreement.

24.7 No amendment or variation of this Agreement will be valid unless agreed in writing by an authorised signatory of each party.

24.8 If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced), the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable, and the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of this Agreement as soon as possible.

24.9 Unless otherwise expressly agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

24.10 All payments under this Agreement will be made without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction.

24.11 Each party will, at its own cost, do all further acts and execute all further documents necessary to give effect to this Agreement.

24.12 Notices under this Agreement must be in writing and sent to the other party's registered office.

25. Governing law and jurisdiction

This Agreement is governed by the law of England and Wales. All disputes under this Agreement not otherwise resolved by the parties in accordance with the process set out in clause 21 (Dispute resolution) shall be subject to the exclusive jurisdiction of the courts of England and Wales.