**THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 13 (LIMITATION OF LIABILITY)**

## 1.    DEFINITIONS

In these Terms the following definitions shall apply:

**Acceptance Tests** – the tests to be carried out on the Site as set out in clause 7.

**Acceptance** – acceptance or deemed acceptance of the Site in accordance with clause 7.

**Agreed Timescales** – means the timetable agreed between the Parties for delivery of the Site in accordance with clause 2.6.

**Browser, Internet Browser, Web Browser** – the software with which websites can be viewed, including but not limited to Mozilla Firefox and Microsoft

**Client** – the entity that purchases the Services from GMP Web Design.

**Commencement Date** – shall have the definition set out in clause 2.2.

**Contract** – the contract between GMP Web Design and the Client for the supply of the Services in accordance with these Terms.

**Data Protection Legislation** – up to but excluding 25 May 2018, the Data Protection Act 1988 and thereafter (i) unless and until the General Data Protection Regulation ((EU) 2016/679) ("GDPR") is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**Domain Name** – the root address of a website, e.g. www.webaddress.co.uk.

**Downtime** – time when the Site is not accessible via the Internet whether due to a technical failure of the Host, work being carried out on the Site or otherwise.

**Force Majeure Event** – any event arising which is beyond the reasonable control of GMP Web Design (including but not limited to the failure of software or hardware, electrical failure, a telecommunications failure, any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war).

**GMP Software** – the software that is GMP Web Design's proprietary software (including all enhancements and corrections of it) as set out in the Order.

**GMP Web Design** –  GMP Web Design, a division of GMP Software Limited whose registered office is at The Old Library, 20 Broad Street, Ross-on-Wye, Herefordshire, HR9 7EA.

**Host** – the company on whose system the Site physically resides.

**Intellectual Property Rights** – patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each

case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Link, Hyperlink** – a "clickable" link embedded on a web page which may take the form of a graphic or text.

**Losses** – all fines, costs, claims, damages and expenses (including legal and professional fees).

**Main Browsers** – the web browsers used by GMP Web Design for the purposes of testing the Site, including the software versions of Internet Explorer and Mozilla Firefox which are in existence on the Commencement Date.

**Materials** – the content provided to GMP Web Design by the Client from time to time for incorporation into the Site including but not limited to photographs, logos, and other printed materials.

**Order** – the Client's purchase order form or the Client's written acceptance of a quotation by GMP Web Design, as the case may be.

**Search Engine** – a website which contains a directory of websites on the Internet enabling users to find websites by subject matter classification.

**Services** – the services to be provided by GMP Web Design to the Client as set out in the Order.

**Site** – the website to be created by GMP Web Design for the Client as set out in the Order.

**Specification** – the description or specification of the Services provided in writing by GMP Web Design to the Client.

**Terms** – the terms and conditions set out in this document as varied from time to time in accordance with Clause 13.3.

**Third Party Products** – the third party software products as set out in the Order.

**Total Fee** – the total fee payable for the Services as set out in the invoice submitted by GMP Design on the Commencement Date.

**Visitors** – a visitor to the Site.

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2.      **BASIS OF CONTRACT**

2.1     The Order constitutes an offer by the Client to purchase the Services in accordance with these Terms.

2.2     The Order shall only be deemed to be accepted when GMP Web Design issues written acceptance of the Order at which point and on which date this Contract shall come into existence ("Commencement Date").

2.3     This Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of GMP Web Design which is not set out in this Contract.

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2.4     Any samples, drawings, descriptive matter or advertising issued by GMP Web Design, and any descriptions or illustrations contained in GMP Web Design's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of this Contract or have any contractual force.

2.5     These Terms apply to this Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6     Any quotation given by GMP Web Design shall not constitute an offer, and is only valid for a period of 1 month from its date of issue.  GMP Web Design is not bound to honour quotations that have expired. Quotations are not legally binding until an acceptable timetable for the provision of the Services has been agreed by both parties. This timetable must be agreed within the one month that the quotation is valid. If an acceptable timetable has not been approved by both parties within one month of the quotation being made, the quotation is deemed to have expired.

## 3.     CLIENT'S OBLIGATIONS

3.1     The Client shall:

(a)     ensure that the terms of the Order and any information provided in the Specification are complete and accurate;

(b)     co-operate with GMP Web Design in all matters relating to the Services;

(c)     provide GMP Web Design with the Materials as GMP Web Design may reasonably require in order to supply the Services in accordance with Clause 3.3 and ensure that the Materials are accurate and complete in all material respects in accordance with     clause 9.

3.2     If GMP Web Design's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default"):

(a)     GMP Web Design shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the   Client Default to relieve it from the performance of any of its obligations to the extent the Client        Default prevents or delays GMP Web Design's performance of any of its obligations;

(b)     GMP Web Design shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from GMP Web Design's failure or delay to perform any of its obligations as set out in this clause 3.2; and

(c)     the Client shall reimburse GMP Web Design on written demand for any costs or losses sustained or incurred by GMP Web Design arising directly or indirectly from the Client Default.

3.3     The Client shall supply the Materials required for GMP Web Design to complete the Site in accordance with the Specification. Where the Client's failure to supply the Materials leads to a delay in completion of the Site, GMP Web Design has the right to extend the Agreed

Timescales. The Client hereby acknowledges that such extensions to the Agreed Timescales by GMP Web Design may take into account further unforeseen and/or predicted delays, and/or existing commitments of GMB Web Design to other projects such that the extension of time made by GMP Web Design to the Agreed Timescales may exceed the actual time delay caused by the Client.

3.4     Where the Client's failure to supply Materials in accordance with Clause 3.3, prevents progress on the Site for more than 14 days, GMP Web Design reserves the right to invoice the Client for any part or parts of the Site already completed.

3.5     For the avoidance of doubt, the Client agrees, in accordance with clause 3.2(c), to indemnify and keep indemnified GMP Web Design from any and all demands, liabilities, costs, losses and claims that may arise directly or indirectly from failure to supply any service or product provided or agreed to be provided by the Client or its third parties from the Site.

## 4.     SUPPLIER'S OBLIGATIONS

4.1     GMP Web Design shall perform the Services with reasonable skill and care and warrants that the Site will perform satisfactorily in accordance with the Specification for the period of 6 months from Acceptance.

4.2     If the Site does not so perform in accordance with the Specification during the period of time specified in Clause 4.1 GMP Design shall for no additional charge carry out any work necessary in order to ensure that the Site substantially complies with the Specification.  If any failure of the Site to perform is caused by any Materials, GMP Web Design shall be entitled to charge for additional work.  Where in the sole discretion of GMP Web Design the Site is then completed according to the Specification, GMP Web Design will deem the Site completed.

4.3     If the Client should vary the Specification after the Commencement Date, GMP Web Design shall be entitled to charge for any additional work undertaken. Where the Client varies the Specification after the Commencement Date, but does not authorise GMP Web Design to increase the cost accordingly, GMP Web Design reserves the right to terminate the Contract and invoice the Client for any part or parts of the Site already completed.

4.4     GMP reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or where the amendment will not materially affect the nature or quality of the Services.  GMP Web Design will not undertake changes to the Specification which would increase the cost, without prior authorisation from the Client.

## 5     FEES

5.1     A non-refundable deposit of 50% of the Total Fee is due immediately on the Commencement Date ("**Deposit**"). GMP Web Design shall not start the Services until the Deposit has been paid in full.

5.2     The remaining 50% of the Total Fee shall become due and payable on Acceptance of the Site. The invoice for the remaining 50% of the Total Fee shall be paid by the Client within 7 days

of the date of the invoice. Unless otherwise agreed in writing between the parties, full payment must be made before the Site is launched.

5.3     The Total Fee quoted in the Contract does not include the cost of domain registration, hosting set up fee or hosting unless otherwise agreed in writing between the parties. The Site will not be launched until payment in full has been made by the Client for the Services.

5.4     Maintenance fees shall be payable by the Client, if included in the Contract. The Maintenance Fees ("**Maintenance Fees**") shall be invoiced on a monthly basis, with a minimum of £10.00 payable in any month where updating is necessary. The Maintenance Fees will be charged on an hourly basis as indicated in the Order. No Maintenance Fee will be required in a month where no updating is necessary. Search engine re-submissions, (other than the original submission included in the Total Fee), shall be included in the Maintenance Fee.

5.5     GMP Web Design reserves the right to use whoever it feels appropriate at the time for any Third Party Products and services. GMP Web Design reserves the right to alter its prices as necessary and without prior notice provided that such changes will not affect the Total Fee payable.

5.6     Any services undertaken by GMP Web Design after Acceptance of the Site outside the scope of the original Specification will be charged on an ad hoc basis at the current charge out rates of GMP Web Design at the time in force.

5.7     The Client shall pay each invoice submitted by GMP Web Design in full and in cleared funds to a bank account nominated in writing by GMP Web Design and time for payment will be of the essence of the Contract.

5.8     If payment has not been received by GMP Web Design by the due date for payment, without limiting GMP Web Design's remedies under clause 10:

(a)     GMP Web Design has the right to suspend the Services, until such time that full payment of the outstanding balance has been received. If full payment has still not been received 7 days after the due date for payment, GMP Web Design has the right to replace, modify or remove the Site        and revoke the Client's licence of the Site until full payment has been received. For the avoidance of doubt, by revoking the Client's licence or removing the Site from the Internet, GMP Web Design does not waive the  Client's obligation to pay any outstanding monies owing to GMP Web     Design;

(b)     GMP Web Design shall be entitled, but not obliged, to charge the Client interest on the overdue amount. Such interest shall be payable by the Client forthwith on demand, from the due date up to the date of actual payment, after as well as before  judgment, at the rate of 4% per annum above the base rate for the time being of Barclays Bank Plc. Such interest shall accrue on a daily basis and be compounded quarterly. GMP Web Design reserves the right to claim interest under the Late Payment of        Commercial    Debts (Interest) Act 1998.

5.9     All amounts payable by the Client under the Contract are exclusive of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by GMP Web Design to the Client, the Client shall, on receipt of a valid VAT invoice from GMP

Web Design, pay to GMP Web Design such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time payment is due for the Services.

5.10    All amounts due under the Contract shall be paid by the Client in full without any set-off, counterclaim, deduction or withholding.  GMP Web Design may, without prejudice to any other rights it may have, set off any liability of the Client to GMP Web Design against any liability of the Client to GMP Web Design against any liability of GMP Web Design to the Client.

5.11    All payments payable by the Client under the Contract shall be come immediately due on termination of the Contract, despite any other provision.  This provision is without prejudice to any right to claim interest under the law, or any such right under the Contract.

## 6.    SCOPE OF THE SERVICES

6.1     GMP Web Design takes no responsibility for services provided by third parties as part of the Services including the hosting of the Site. GMP Web Design will use its reasonable endeavours to ensure that Downtime in relation to the Site is kept to a minimum.

6.2     Unless the Client has agreed to pay a Maintenance Fee in accordance with Clause 5.4, and subject to Clause 4.2 GMP Web Design takes no responsibility for the functionality or maintenance of the Site after Acceptance of the Site.   Errors (both technical and typographical) solely attributable to GMP Web Design will be corrected free of charge, but GMP Web Design reserves the right to charge a reasonable fee for correction of errors for which GMP Web Design is not responsible, including, but not limited to modification of the Site by a third party and typographical errors contained in the Materials.

6.3     Installation of the Site on the Internet is limited to the uploading of all necessary files to the Host, and testing the functionality of the Site.

6.4.    GMP Web Design shall use its reasonable endeavours to ensure that the Site is listed in Search Engine results.  GMP Web Design however does not guarantee that:

(a)     the Site will appear for any given position or rank for any given search term within a Search Engine's results;

(b)     that a currently unlisted Site will appear in the Search Engine's results; or

(c)     that a currently listed Site will remain listed within the Search Engine results indefinitely.

6.5     The Client acknowledges and accepts that it is within the complete discretion of a Search Engine as to which websites they will list. The Client further acknowledges that GMP Web Design cannot ensure placement or rank of the Site on the Search Engines as part of the Services and that it is possible that the Site may never appear within Search Engine results at all. GMP Web Design does not control the Search Engine's algorithms and the Client agrees and accepts that changes in Search Engine ranking and listings of the Site may occur daily, weekly or even hourly.

6.6     GMP Web Design shall not be liable to the Client as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.  If the Force Majeure Event prevents GMP Web Design from providing any of the Services for more than 4 weeks, GMP Web Design shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

6.7     GMP Web Design shall use all reasonable endeavours to provide the Site within the Agreed Timescales.  Time is not of the essence in this Contract and the Client agrees that GMP Web Design shall not be liable for any claims, losses, costs incurred or compensation due to any failure to carry out the Services within the Agreed Timescales. GMP Web Design, at its sole discretion, may offer a full or partial refund and/or additional services in light of any failure to carry out the Services within the Agreed Timescales and/or sub-contract the work to a third party if it so decides.

6.8     On handover of the Site, from GMP Web Design to the Client, the Client shall assume entire responsibility in ensuring that the Site is functioning correctly before use.

6.9     GMP Web Design shall use its reasonable endeavours to ensure that display and functionality of the Site is error free in the Main Browsers before handover of the completed Site to the Client. Whilst every effort is made to make sure that files are error free, GMP Web Design cannot guarantee that the display or functionality of the Site will be uninterrupted or error free. If after handover of the Site errors are found in code that GMP Web Design has created using the Main Browsers and domain name setup and hosting setup are the same as when work began, then GMP Web Design will correct these errors for the Client free of charge.

6.10    GMP Web Design may from time to time recommend to the Client that updates are needed to the Site in order to comply with, including but not limited to, new laws, software releases and web standards. GMP Web Design shall provide the Client with a quote for any updates as separate work. However, the Client agrees GMP Web Design is not liable for any failure to inform or implement these updates to the Site. The Client agrees that it shall indemnify and keep indemnified GMP Web Design from any and all demands, liabilities, costs, losses and claims arising from the Client's failure to implement the updates as recommended by GMP Web Design pursuant to this clause 6.10.

## 7.     DEVELOPMENT AND ACCEPTANCE OF THE SITE

7.1     Once GMP Web Design has completed the design and development of the Site, GMP Web Design shall run the Acceptance Tests. The procedure set out in this clause 7 shall be repeated in respect of any further development works agreed by the parties from time to time.

7.2     The Acceptance Tests shall test compliance of the Site with the Specification.

7.3     Acceptance of the Site shall occur when the Site has passed the Acceptance Tests.  GMP Web Design shall notify the Client when the tests have been passed. Once the Site has passed the Acceptance Tests, the Client shall be notified and shall have 7 days to review the Site ("Review Period"). The Client shall notify GMP Web Design of any unsatisfactory aspects of the Site within the Review Period.  If the Site has not been reported to GMP Web Design as unsatisfactory within the Review Period it will be deemed to have been accepted by the Client

in accordance with Clause 7.6. Once accepted or deemed accepted the Site cannot subsequently be rejected by the Client.

7.4 GMP Web Design shall provide the results of the Acceptance Tests to the Client upon reasonable request by the Client in writing.

7.5 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Client, or by one of the Client's sub-contractors or agents for whom GMP Web Design has no responsibility ("Non-Supplier Defect"), the Site shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect in accordance with Clause 7.6. GMP Web Design shall provide assistance reasonably requested by the Client in remedying any Non-Supplier Defect by supplying additional services or products. The Client shall pay GMP Web Design in full for all such additional services and products at the Supplier's then current fees and prices.

7.6 Acceptance of the Site shall be deemed to have taken place upon the occurrence of any of the following events:

(a) the Client uses any part of the Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or

(b) the Client does not reject the Site within the Review Period as set out in Clause 7.3; or;

(c) the Client rejects the Site within the Review Period but does not approve subsequent work performed by GMP Web Design to remedy any points reported by the Client as unsatisfactory, and GMP Web Design in its sole discretion considers that the Client is acting unreasonably in its repeated rejection of the Site;

(d) the defect in the Site is due to a Non Supplier Defect.

7.7 On Acceptance of the Site the balancing payment of 50% of the Total Fee will become due and payable in accordance with Clause 5.2.

## 8. INTELLECTUAL PROPERTY

8.1 All Intellectual Property Rights in the Site (including in the content of the Site and the Site Software), but excluding the Materials, arising in connection with this Contract shall be the property of GMP Web Design, and GMP Web Design hereby grants the Client a non-exclusive, non-transferable licence of such Intellectual Property Rights for the purpose of operating the Site.

8.2 The Client shall indemnify and keep indemnified GMP Web Design against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.

8.3 GMP Web Design shall indemnify and keep indemnified the Client against all damages, losses and expenses arising as a result of any action or claim that the Site infringes the Intellectual Property Rights of a third party, other than infringements referred to in clause 8.2.

8.4    The indemnities in clause 8.2 clause 8.3 and clause 9.3 are subject to the following conditions:

(a)    the indemnified party promptly notifies the indemnifier in writing of the claim;

(b)    the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;

(c)    the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and

(d)    the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

8.5    The indemnities in clause 8.2 clause 8.3 and clause 9.3 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

8.6    Any domain name obtained by GMP Web Design on behalf of the Client will belong to the Client. The Client warrants that the domain name sought does not infringe the Intellectual Property Rights of any third party. The Client agrees to indemnify and keep indemnified GMP Web Design, (including any incidental costs), against any claims or losses should a domain name applied for, or obtained, infringe the Intellectual Property Rights of any third party.

8.7    All domain names obtained by GMP Web Design must be registered with the relevant authority and the Client hereby agrees with GMP Web Design that it shall pay the registration fees in this respect.

8.8    The Third Party Products shall be supplied in accordance with the relevant licensor's standard terms. The one-off licence fee for such Third Party Products is included in the Total Fee payable.

8.9    GMP Web Design grants to the client an non-exclusive, non-transferable, perpetual royalty free licence to use the GMP Software in conjunction with the Site. The right to use the GMP Software granted to the Client in this clause 8.7, shall be limited to the right for the Client to copy the GMP Software to provide back-up facilities.

8.10    On Acceptance of the Site, the Client shall be given the password to the Site. The Client hereby acknowledges that it shall be permitted to change the content of the Site using this password but shall not be permitted to:

(a)    change the design of the Site (such Intellectual Property Rights being vested in GMP Web Design by virtue of clause 8.1); and

(b)    amend the code whether directly itself or indirectly through a third party.

8.11    The Client acknowledges that the Intellectual Property Rights in the Site are vested in GMP Web Design. Accordingly, the Client agrees that a third party cannot use, amend or modify the Intellectual Property Rights of GMP Web Design contained within the Site          without the written consent        of GMP Web Design.

8.12   For the avoidance of doubt, any code that is not freely accessible to third parties and not in the public domain, and/or to which GMP Web Design or their suppliers own the copyright, may not be copied, published, distributed or passed to any third parties by the Client in any form without prior written consent from GMP Web Design.

## 10.   SITE CONTENT

9.1   Subject to clause 6.2, GMP Web Design shall update the Site with Materials provided from time to time during the course of the Contract by the Client. The Client shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights      (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) ("**Inappropriate       Content**").

9.2   The Client acknowledges that the GMP Web Design has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. GMP Web Design reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content.  GMP Web Design shall notify the Client promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.

9.3   The Client shall indemnify and keep indemnified GMP Web Design against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.

9.4   The Client agrees that GMP Web Design may include development credit(s) and/or link(s) displayed on the home page of the Site, unless agreed otherwise in the Specification. These development credit(s) and/or link(s) may not be removed or modified by the Client, or by a third party authorised by the Client, without prior written consent from GMP Web Design.

## 10.   TERMINATION

10.1   Without affecting any other right or remedy available to it, either party may terminate the Contract without liability to the other party and with immediate effect by giving written notice to the other party if:

(a)   the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;

(b)    the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

(c)   the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

(e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party;

(f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

(g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1(a) to clause 10.1(f) (inclusive); and

(k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

10.2 On termination of the Contract by GMP Web Design pursuant to clause 10.1, all licences granted by GMP Web Design under the Contract shall terminate immediately.

10.3 On termination of the Contract otherwise than on termination by GMP Web Design pursuant to clause 10.1, GMP Web Design shall return all Materials to the Client.

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

## 11. CONFIDENTIALITY

11.1 The definition in this clause applies to the Contract.

"Confidential Information": all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

(a) identified as confidential at the time of disclosure; or

(b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

11.2    Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

11.3    Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

11.4    The obligations set out in this clause 11 shall not apply to Confidential Information which the receiving party can demonstrate:

(a)    is or has become publicly known other than through breach of this clause 11; or

(b)    was in possession of the receiving party prior to disclosure by the other party; or

(c)    was received by the receiving party from an independent third party who has full right of disclosure; or

(d)    was independently developed by the receiving party; or

(e)    was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

11. 5    For the avoidance of doubt, any offer or proposal, whether including technical features, for functionality aspects of design or pricing made by GMP Web Design to the Client, shall be treated as Confidential Information for the purpose of this Agreement.

11. 6    The obligations of confidentiality in this clause 11 shall not be affected by the expiry or termination of this Contract.

## 12.    DATA PROTECTION

12.1    Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

12.2    The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Data Controller and GMP is the Data Processor. For the purposes of this Contract, Data Controller, Data Processor, Personal Data and Data Subject shall have the meanings as defined in the Data Protection Legislation. The scope, nature and purpose of processing by GMP, the duration of the processing and the types of Personal Data and categories of Data Subject shall be as follows:

12.2.1  GMP will process Personal Data such as contact details of the Client and those employees of the Client who are involved in the delivery of the Contract and all related correspondence so that GMP and the Client can contact each other and monitor the performance of the Contract.

12.2.2   GMP may process Personal Data about employees of the Client who will require access to the Site.  This Personal Data may include user names and passwords for the Site the Client has in order for GMP to be able to provide the Services.

12.2.3   GMP may process Personal Data about the Client's customers, partners or suppliers where the Client has provided such Personal Data to GMP for incorporation into the Site and/or where GMP is providing a back-up copy of the Site for the Client and so   storing   the Client's data.

12.2.4   GMP is processing their Personal Data on behalf of the Client in order to perform the Contract.

12.2.5   Subject to clause 12.4.5 GMP will retain such Personal Data relating to the performance of the Contract for a period of 6 months following Acceptance of the Site as may be reasonably required to enable GMP to review its performance if any complaints          or issues arise after          termination of the Contract and retain any Personal Data required for satisfying any accounting and tax obligations for a period of 6 years following termination of the Agreement.  GMP will erase or return all other Personal Data          on   Acceptance   of the Site in accordance with        clause 12.4.7.

12.2.6   GMP shall only process the Personal Data supplied to it by the Client for the purposes of keeping a record of  Licensed Users and to enable GMP to perform its obligations and supply the Services in accordance with this Contract and shall not process          Personal Data for any other        purpose.

12.3      Without prejudice to the generality of clause 12.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to GMP for the duration and purposes of this Contract.

12.4      Without prejudice to the generality of clause 12.1, GMP shall, in relation to any Personal Data processed in connection with the performance by GMP of its obligations and Services under this Contract:

12.4.1   process that Personal Data only on the written instructions of the Client unless GMP is required by the laws of any member of the European Union or by the laws of the European Union or the United Kingdom applicable to GMP to process Personal Data          (Applicable Laws). Where  GMP is relying on Applicable Laws as the basis for processing Personal Data, GMP shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws    prohibit GMP from so notifying the Client;

12.4.2   ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to,        Personal Data, appropriate to      the harm        that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and        the   cost   of   implementing any measures (those measures may        include, where  appropriate,  pseudonymising  and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring  that  availability of  and  access  to  Personal  Data  can  be

restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

12.4.3   ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

12.4.4   not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

(i)      the Client or GMP has provided appropriate safeguards in relation to the transfer;

(ii)     the Data Subject has enforceable rights and effective legal remedies;

(iii)    GMP complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv)     complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

12.4.5   assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and  consultations               with supervisory      authorities or regulators;

12.4.6   notify the Client without undue delay on becoming aware of a Personal Data breach;

12.4.7   Subject to clause 12.2.5, at the written direction of the Client, delete or return Personal Data and copies thereof to the Client unless required by Applicable Law to store the Personal Data; and

12.4.8   maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and allow for audits by the Client or the Client's designated auditor on reasonable prior notice during normal business hours. Such audits shall be requested by the Client no more frequently than once per calendar year.

12.5    The Client consents to GMP appointing cloud service providers as third party processors of Personal Data under this Contract to store a back-up copy of the Site (including any Client database). GMP confirms that it will enter into a written agreement with such third-party processors incorporating terms which are substantially similar to those set out in this clause 12. As between the Client and GMP, GMP shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 12.

12.6    Either party may, at any time on not less than 30 days' notice, revise this clause 12 (except the provisions contained in clauses 12.7 and 12.8 which shall remain in full force and effect), by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

12.7    The Client shall indemnify GMP against all Losses arising in connection with or as a result of the Client's failure to comply with the provisions of this clause 12 and/or arising in connection with or as a result of the infringement of the Data Protection Legislation by the Client, its employees, agents or sub-contractors.

12.8    Subject to the provisions of clause 13.3 below, GMP shall indemnify the Client against all Losses arising in connection with or as a result of GMP's failure to comply with the provisions of this clause 12 and/or arising in connection with or as a result of the infringement of the Data Protection Legislation by GMP, its employees, agents or sub-contractors.

## 13.    LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1    Nothing in this Contract shall operate to exclude or limit either party's liability for:

(a)    death or personal injury caused by its negligence; or

(b)    any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(c)    fraud; or

(d)    any other liability which cannot be excluded or limited under applicable law.

13.2    GMP Web Design shall not be liable to the Client for any damage to software, subject to clause 12.8 any damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

13.3    Subject to clause 13.1, GMP Web Design's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with the Contract or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed the total fees payable by the Client to GMP Web Design under this Contract in that calendar year.

13.4    GMP Web Design provides the Site and the contents thereof on an "as is" basis and subject to clause 4.1 makes no warranties with regard to the Site.  This Contract sets out the full extent of GMP Web Design's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this Contract or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

## 14.    GENERAL

14.1    **Governing Law and Jurisdiction**

(a)    This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

(b)     Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or   claims).

14.2    **Survival of Contract**

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

14.3    **Change of Terms and Conditions**

No variation of this Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

14.4 **Assignment and other dealings**

(a)     GMP Web Design may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

(b)     The Client shall not, without the prior written consent of GMP Web Design, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

14.5 **Notices**

(a)     Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that          party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

(b)     A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.5(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

(c)     The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.6    **Waiver**

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.7 **No partnership or agency**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.8 **Third parties**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

## 15. ACCEPTANCE OF TERMS AND CONDITIONS

By accepting a quotation or making a payment of the invoice in relation to the Services, the Client acknowledges to have read, understood, and accepted the Terms, and agrees to be legally bound by these Terms.

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