

Arkhitiks Limited, Terms & Conditions of Service (“Terms”) v3.1

In these Terms, words with capital letters have the meanings given to them in clause 21.

1. What you are buying from us under this Contract and for how long

1.1. This Contract is for the provision of Services as detailed in the Service Schedule.

1.2. You agree to buy the relevant Services from us as detailed in the Service Schedule for the Service Term, unless you are entitled to terminate under clause 18 below.

2. The Contract

2.1. Following any request from you for Services from us, we may send you a Service Schedule.

2.2. If you wish to proceed with the provision of Services in accordance with the Service Schedule you must return a signed copy of the Service Schedule and/or a purchase order, signed by an authorised party on your behalf prior to the commencement of the Services, as confirmation that the Service Schedule accurately sets out your requirements.

2.3. No order for Services shall be deemed to be accepted by us until the earlier of us (a) accepting such offer in writing or (b) providing the Services at which point a “Contract” for the provision of Services under these Terms will come into effect.

2.4. Each Service Schedule signed by you, or request for our Services from you, shall be deemed to be an offer by you to purchase the Services subject to these Terms:-

2.4.1. to the exclusion of all other terms and conditions (including any terms and conditions which you purport to apply under any purchase order, confirmation of order, specification or other document); and

2.4.2. constitutes a separate Contract.

2.5. If there is any conflict or inconsistency between the following documents, to the extent of any conflict or inconsistency only, the following order of priority shall apply:-

2.5.1. the Service Schedule (including any Additional Terms); and

2.5.2. these Terms.

2.6. We may, at any time, and in our sole discretion, modify these Terms. Any such modification will be effective immediately on notification to you. Your continued use of the Services following any such modification constitutes your acceptance of the modified Terms.

3. Service Schedules

3.1. We accept no liability for quotations, proposals or Specifications (including any Service Schedule).

3.2. Quotations are valid for 30 days from issue provided that we have not withdrawn them.

3.3. All IPR in the Service Schedule (including any Specifications included as part of the Service Schedule) belong to us and subject to clause 4.9.7 you must not disclose our Service Schedule to any third parties.

4. The Services

4.1. We warrant that:-

4.1.1. we shall perform the Services with reasonable care and skill; and

4.1.2. design and/or develop the Deliverables in accordance with the Specification.

4.2. Whilst we endeavour to provide Services within any quoted timescales we give, including those set out in any Timetable, these are estimates only and time shall not be of the essence in this Contract.

4.3. Unless otherwise expressly agreed by us, we do not accept responsibility or obligations in relation to project management and co-ordination for an overall project of which our Services form part.

4.4. The outcome of search engine optimisation services and the costs involved to achieve specific outcomes in relation to pay per click advertising cannot be guaranteed as there are many external affecting factors that are beyond our control.

4.5. Where we use third party platform providers for provision of the Services:-

4.5.1. you hereby authorise us to act as your agent to sign onto the relevant provider’s platform and open an account on your behalf or for your benefit and to incur any such costs in accordance with such; and

4.5.2. that in doing so you, you agree to be bound by the third party provider’s terms and costs in connection with that platform including google analytics and google adwords; and

4.5.3. where the Services include uploading any relevant templates or messages onto the relevant platform, but no further input after that unless expressly agreed.

4.6. Unless otherwise expressly agreed we accept no liability for Deliverables complying with the applicable of laws of any territory.

4.7. We reserve the right to make changes to the Services that we provide you with, provided that such changes do not adversely affect your Services.

4.8. If we have agreed in the Service Schedule to provide Support & Maintenance in relation to any Digital Deliverable:-

4.8.1. the scope of the Support & Maintenance will be set out in the Service Schedule; and

4.8.2. you must supply us with such access, usernames and other information as required to enable us to provide such Support & Maintenance.

4.9. If we have agreed to provide a Detailed Specification:-

4.9.1. we shall endeavour to complete a Detailed Specification within a reasonable time of commencement of this Contract and you shall review and comment and formally accept in writing or reject the Detailed Specification within the timescale reasonably requested by us of our issue of the Detailed Specification in light of your anticipated timescales;

4.9.2. if you reject the draft Detailed Specification, you shall do so in writing and include in your rejection, reasons why the Detailed Specification does not meet the requirements as detailed in the Service Schedule or the Outline Specification as the case may be;

4.9.3. you and us shall work in good faith to agree a revised Detailed Specification which shall be re-submitted and reviewed and clauses 4.9.1 and 4.9.2 shall apply;

4.9.4. once the draft Detailed Specification is approved, it shall replace the Outline Specification;

4.9.5. the last draft of the Detailed Specification shall be deemed to be accepted if the Services commence without formal approval;

4.9.6. you may terminate this Contract without liability if you do not wish to proceed with the Detailed Specification by giving us written notice at any time on or before 28 days after we submit the first draft Detailed Specification for review in accordance with clause 4.9.1 provided that you have not formally accepted the Detailed Specification and the Services have not commenced; and

- 4.9.7. if you terminate this Contract under clause 4.9.6, subject to receipt of payment by you in relation to Services rendered to date you may disclose our Outline Specification strictly only to a potential third party provider provided that:-
- (i) you retain it in its current format with our disclaimers on its front; and
 - (ii) we accept no liability for its contents as detailed in clause 3.1.

5. Your responsibilities

5.1. You shall and shall procure that your Personnel shall provide us with your full and timely co-operation and complete and accurate information as required to enable us to provide the Services including:-

- 5.1.1. access to and use of all information, premises, materials, your Materials, equipment, systems, software and your Personnel reasonably required by us for the performance by us of our obligations under this Contract and with any consents and approvals as required by this Contract; and
- 5.1.2. in a prompt and timely manner:-
- (i) responding to any queries or requests for further information by us;
 - (ii) providing any assistance or information as may be reasonably required by us;
 - (iii) carrying out testing, following advice and instructions as requested by us;
 - (iv) giving necessary consents and approvals as required;
 - (v) providing us with information, data and content in the format as requested by us including where content provided by you needs to be instantly readable and useable for its purpose on the intended platform; and
 - (vi) comply with your responsibilities in any plans or Service Schedule.

5.2. Without prejudice to any other of our rights and remedies under this Contract as a result (directly or indirectly) from your or your Personnel's failure or delay to fulfil any of your obligations under this Contract including as detailed in this clause 5:-

- 5.2.1. we shall not be liable for any failure or delays in carrying out our obligations under this Contract; and
- 5.2.2. timescales may be delayed and prices may increase.

5.3. Unless we have expressly agreed to provide them as part of the Services, (including any Add Ons) or integration services it is your responsibility to provide and arrange for those goods or services to be provided and/or integrated by you.

5.4. You are solely responsible for the purchase and registration of domain names.

6. Dealing with third parties

6.1. Unless otherwise expressly agreed by us in this Contract we will not enter into any contract with a third party on your behalf. Where we have agreed to do so, the scope of our authority will be set out in the Service Schedule.

6.2. You shall ensure that any third party appointed by you to liaise with us in relation to the Services shall provide information and co-operate with us on the same terms as is required of you under this Contract.

6.3. You shall remain liable to us for any acts or omissions of your Personnel as if such acts or omissions have been committed or omitted by you.

6.4. Unless expressly agreed otherwise we shall have no responsibility for your Personnel.

6.5. We shall not be liable for any delay in the supply of Services due to non-performance, delay or defective performance or other actions or omissions of you or your Personnel.

6.6. If any third parties engaged by you in relation to the Services (or for other work for you) provide work or services that is not compatible with the Services or that causes a delay in the provision of the Services then:-

- 6.6.1. we shall be entitled to charge you for any additional work or for any additional costs resulting from such incompatibility;
- 6.6.2. in the event that such incompatibility is so severe as to materially impact on our ability to deliver the Services we shall be entitled, on written notice to you, and without prejudice to any other rights that it may have, to terminate the Contract.

7. Approvals

7.1. Subject to clause 8 which applies in relation to acceptance of Digital Deliverables, unless stated in the Service Schedule or as otherwise agreed, in relation to any approvals or consents required by you:-

- 7.1.1. we must receive Written Approval from duly authorised personnel; and
- 7.1.2. Written Approval in relation to any aspect of the Services including in relation to Non Digital Deliverables or between interim stages of the development of Digital Deliverables must be provided in accordance with any Timetable or if there is no Timetable within a timescale requested by us in line with any timescales we are trying to work to ("**Request for Approval**").

7.2. We will raise numerous Requests for Approval during provision of the Services which will occur between any milestones or stages set out in the Service Schedule. We may also request your Written Approval in relation to draft Materials and draft Deliverables in relation to which you have already given Written Approval, including different elements of the Services or in different formats. This will include your Written Approval in relation to printable versions of print ready artwork in relation to which you may have already submitted Written Approval.

7.3. Copy

- 7.3.1. A Written Approval will be our authority from you to publish Copy. No Copy will be published without Written Approval.
- 7.3.2. Unless we expressly agree otherwise in the Service Schedule, once Written Approval has been given we accept no responsibility or liability for typos and misprints in Copy.
- 7.3.3. Unless clause 7.3.2 applies, provision of Written Approval by you in relation to Copy is your approval that the Copy contains no typos or misprints. Accordingly, any costs of re-print, withdrawal, re-publishing or otherwise incurred for this reason will be expenses which shall be payable by you.

7.4. You shall not be able to claim that Deliverables or any stage of creation of the Deliverables has failed to meet the Specification unless you can demonstrate in writing within the earlier of:-

- 7.4.1. 7 days of Request for Approval; or
- 7.4.2. the timescale within which a Written Approval must be received pursuant to a Request for Approval,
- that the Deliverables do not meet the Specification (in all material respects).

- 7.5. Any minor fault, including cosmetic faults and typos, will not prevent such Written Approval from being given, but will be recorded (in a manner to be prescribed by us) with a timetable for resolution which shall be agreed between us and you.
- 7.6. If any failure of a Deliverable to have been provided in accordance with the Specification is due to an act or omission of you or your Personnel for whom we have no responsibility (a **“Third Party Defect”**), the Deliverable shall have been deemed to have been provided in accordance with the Specification notwithstanding that Third Party Defect. We shall provide assistance reasonably requested by you in remedying any Third Party Defect by supplying additional services or products at our then current rates.
- 7.7. Where no such Written Approval is received under clause 7.1, unless you have notified us in writing of any reasons why you do not give Written Approval, without prejudice to any other of our rights or remedies you will be deemed to have given your approval:-
- 7.7.1. to proceed (which we may or may not accept at our discretion); and/or
- 7.7.2. that any Deliverable meets the Specification in all material respects,
- and in either case we reserve the right:-
- 7.7.3. not to commence the Services or any planned stage of the Services until we have received any required Written Approval from you (and this may impact on any estimated timescales and/or the Fee);
- 7.7.4. to terminate this Contract on giving you 7 days written notice; and/or
- 7.7.5. to invoice you for any milestone payments that might be due as detailed in clause 11.1.
- 8. Acceptance of Digital Deliverables**
- 8.1. This clause 8 shall only apply in relation to Digital Deliverables and the provisions of this clause 8 shall relate only to the Acceptance of such. Clause 7 shall not apply to Digital Deliverables but shall continue to apply in relation to any sign offs or other approvals required in relation to the delivery of the Digital Deliverables.
- 8.2. Within 14 days of us notifying you that we consider the Digital Deliverable is complete you shall carry out UAT (**“UAT Period”**).
- 8.3. You shall not be able to claim that UAT has failed unless you can demonstrate in writing within the UAT Period that the Digital Deliverable does not operate in the manner provided for in the Specification. It is your responsibility to ensure that you have suitable testing data to enable UAT during the UAT Period.
- 8.4. Any minor faults, including cosmetic faults and typos, encountered during UAT will not prevent Acceptance but will be recorded (in a manner to be prescribed by us) with a timetable for resolution which shall be agreed between us and you.
- 8.5. Where we agree (acting reasonably) that the Digital Deliverable fails in one or more material respects to meet the Specification within the period detailed in clause 16.3:-
- 8.5.1. we shall, as soon thereafter as reasonably practicable, implement such modifications to the Digital Deliverable as necessary in order to cure the relevant defects or non-conformity detailed in your notice; and
- 8.5.2. we shall deliver the modified Digital Deliverable to you for your Acceptance, whereupon clauses 8.2, 8.3, 8.4, 8.5 and 8.6 shall apply and this shall be your sole and exclusive remedy in this regard.
- 8.6. **“Acceptance”** of the Digital Deliverable shall be upon the sooner of:-
- 8.6.1. when the Digital Deliverable or any part of it has been used in live operation; or
- 8.6.2. written acceptance by you of the Digital Deliverable; or
- 8.6.3. within 7 days of the end of the UAT Period, unless we have received written notice from you under clause 8.3.
- 9. Work carried out outside the agreed scope of Services / changes to specifications etc**
- 9.1. Where you request additional work, we may ask you to sign a new Contract for Additional Services in which case clause 9.3 shall apply or such request may be treated as a variation to the Contract, in which case clause 9.2 shall apply.
- 9.2. If during the Contract you ask for any changes to the Services or the Contract; requirement change or specification including:-
- 9.2.1. changes to the Service Schedule;
- 9.2.2. changes to the Timetable; and/or
- 9.2.3. changes to your requirements including changes to the Deliverables which impact the Services;
- which in our reasonable opinion gives rise to:-
- 9.2.4. a service which we have not already agreed to provide to you; or
- 9.2.5. a change to the Services or specifications that we have already agreed to provide to you,
- then:-
- 9.2.6. we will endeavour to notify you as soon as possible of any impact on Services we are currently carrying out for you in relation to estimated timescales and prices;
- 9.2.7. where it is reasonably possible we will endeavour to notify you of any additional costs before we commence any work; and
- 9.2.8. unless otherwise agreed any work carried out by us which is outside the scope of any agreed Services will be charged at our prevailing time and materials rates in place from time to time.
- 9.3. Requesting Additional Services
- 9.3.1. You from time to time may request us to supply additional services which are not included in the Service Schedule (i.e. **“Additional Services”**). We shall endeavour to comply with your request and where we agree to provide any such Additional Services:-
- (i) the details of those Additional Services shall be as agreed between you and us from time to time; and
- (ii) unless otherwise agreed by us in writing these Terms shall apply to the provision of such Additional Services.
- 10. What you have agreed to pay and how it might change**
- 10.1. The Fee you have agreed to pay is as detailed in the Service Schedule.
- 10.2. All amounts payable under this Contract shall unless otherwise stated be exclusive of VAT, any other levies or any other relevant local sales taxes which shall be paid at the rate and in the manner for the time being prescribed by law.
- 10.3. Where you request immediate prioritisation of your work (i.e. to be carried out within our standard lead time of 3 days of your request), we reserve the right to charge at our premium prevailing time and materials rates for a minimum of two hours.
- 10.4. We may increase our quoted hourly rates at any time by giving 30 days notice before the Fee increase comes into force. If you do not agree to such increases then you

- may cancel the Services by giving us 30 days notice. If you do not exercise this right within 30 days of the receipt of such notice, you shall be deemed to have accepted such Fee increase.
- 10.5. Any fixed price or estimate given is subject to any assumptions and parameters detailed in the Service Schedule and any changes to the assumptions and parameters will be a change to the Contract which will be dealt with under clause 9.
- 10.6. In agreeing the Fee we estimate and/or allocate certain estimated time for the Services and this is based on our method of work and experience – in the event that you wish to work or progress the Services differently (e.g. by having more than anticipated telephone or other correspondence) then we reserve the right to set a limit to our project management time and to charge additional fees if this limit is exceeded.
- 10.7. Unless otherwise expressly stated to be included in the Fee you will reimburse us for our reasonable expenses incurred by us where such expenses are incurred wholly and exclusively for the purpose of providing the Services including for any travel, subsistence or materials, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 11. When you must pay**
- 11.1. Where we have agreed to milestone payments, unless agreed otherwise stated by us in writing, the Fee shall be paid in the following instalments of:-
- 11.1.1. 50% in advance of commencement of the Services; and
- 11.1.2. 50% on completion of the Services.
- 11.2. Where we have agreed to milestone payments, unless agreed otherwise stated by us in writing, any sums other than the Fees or expenses (including additional costs incurred under clauses 9.2 or 10.3) shall be invoiced by us monthly.
- 11.3. Where any payments linked to milestones are agreed, these payments shall still be made by you where failure by us to achieve such milestones is (i) as a result of acts or omissions of you or your Personnel; or (ii) for reasons of Force Majeure Event.
- 11.4. All invoices must be paid by their due date as detailed on the invoice or the Service Schedule. If no due date is detailed, the due date will be 30 days from the date of the invoice.
- 11.5. You agree to pay the Fee without deduction or set off.
- 11.6. Where we incur expenses in accordance with clause 10.7:-
- 11.6.1. Unless we require payment of expenses up front in accordance with clause 11.6.2, any expenses incurred by us shall be invoiced by us when the expenses are incurred.
- 11.6.2. If we require expenses to be paid up front before we can place orders we will let you know. Delayed payment of such expenses may delay any anticipated timescales.
- 12. What happens if you don't pay on time or at all**
- 12.1. If you fail to pay any amount payable by you under this Contract or any other Contract with us, without prejudice to any other rights or remedies we may have, we may:-
- 12.1.1. charge you interest on the overdue amount, payable by you immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 8% a year above the base rate for the time being Santander UK plc. Such interest shall accrue on a daily basis and be compounded quarterly; and/or
- 12.1.2. claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and Late Payment of Commercial Debts Regulations 2002; and/or
- 12.1.3. suspend, cancel or amend any agreed credit terms with you; and/or
- 12.1.4. assign your debt to a third party in which case an additional charge of 15% of the gross invoice amount will be payable; and/or
- 12.1.5. if payment is not received within 30 days of the due date, suspend the Services under this Contract and any other Contract until payment of all outstanding invoices are paid in full; and/or
- 12.1.6. if payment is not received within 60 days of the due date, we may without further notice to you:-
- (i) terminate this Contract and/or any other Contracts; and/or
- (ii) recover any Deliverables passed to you under this Contract, where use by, licence to you is subject to payment including as detailed in clause 13.2.
- 12.2. If there are any bona fide payment or pricing queries, you shall notify us of these within 10 days of receiving the invoice and you shall pay any undisputed amount.
- 13. Intellectual Property Rights ("IPR")**
- 13.1. As between you and us, all IPR in the Service Materials and the Deliverables shall vest in us upon creation.
- 13.2. Subject to full payment of sums due under this Contract and other contracts, clauses 13.5 and 13.6, we hereby grant you a perpetual, non-transferrable, non-exclusive licence to use the Deliverables and any Service Materials solely for use for the purpose for which they were created by us pursuant to this Contract.
- 13.3. In respect of Digital Deliverables you shall not:-
- 13.3.1. copy, modify, disassemble, decompile reverse engineer or reverse translate or in any other manner decode them;
- 13.3.2. subject to your rights to update, make adaptations or variations; or
- 13.3.3. sub-licence, rent, lend, assign or transfer in any other way.
- 13.4. Subject to clauses 13.5 and 13.6, we warrant that the use of the Deliverables for the purposes of the licence will not infringe the IPR of any third party.
- 13.5. Third party software
- 13.5.1. Other than is detailed in the Service Schedule we accept no liability, responsibility or obligation in relation to the procuring or maintenance of third party licences in relation to software owned by third parties.
- 13.5.2. Any Open Source Software provided by us may be used according to the terms of the specific licence under which the relevant Open Source Software is distributed but is provided "as is" and expressly subject to the disclaimer in clause 17.2.
- 13.6. Third party licences
- 13.6.1. Other than is detailed in the Service Schedule:-
- (i) we accept no liability, responsibility or obligation in relation to the procuring of third party licences in relation to Materials provided by third parties ("Third Party Materials");
- (ii) you are only permitted to use the Third Party Materials contained within the Deliverables for the purpose as provided under this Contract.

- 13.6.2. You shall indemnify us and keep us indemnified and hold us harmless in respect of all costs, or losses sustained or incurred by us (including any legal costs, any direct, indirect or consequential losses, loss of profit and loss of reputation), that arise directly or indirectly from your mis-use of the Third Party Materials which puts us in breach of any licence of such Third Party Materials.
- 13.7. Your Existing Materials
- 13.7.1. All IPR in your Existing Materials shall remain vested in you at all times and you grant us a non exclusive licence to use the IPR in your Existing Materials for the purpose of providing the Services under this Contract.
- 13.7.2. You grant us a non exclusive, irrevocable royalty free licence to use the IPR in your Existing Materials to the extent that it comprises any IPR in the Service Materials.
- 13.7.3. You warrant that any of your Existing Materials or content you provide us with under this Contract does not infringe the IPRs of any third party.
- 13.7.4. You shall indemnify us and keep us indemnified and hold us harmless in respect of all costs, or losses sustained or incurred by us (including any legal costs, any direct, indirect or consequential losses, loss of profit and loss of reputation), that arise directly or indirectly from a breach of the warranty in clause 13.7.3.
- 13.8. Where we develop Digital Deliverables, the source code remains our IPR, but is licensed in accordance with clause 13.2 and its use is subject at all times to the terms of this Contract including clause 13.3.
14. Confidential Information and publicity
- 14.1. Both parties shall keep all Confidential Information belonging to the other confidential and shall not use or disclose the Confidential Information except where required to by law or for the purpose of delivering the Services including the procurement of third party services in relation to the Services.
- 14.2. You give us permission to name you as one of our clients on our website or any other marketing materials and for us to include details of the work we have carried out for you in our portfolio from time to time. We will only ever refer to high level details and will not reveal sensitive details about your business unless otherwise agreed.
15. Data protection
- 15.1. The terms “process”, “personal data”, “data processor”, “data controller”, “data subject” shall have the terms given to them in the Data Protection Legislation.
- 15.2. Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 15.3. The parties acknowledge that for the purposes of the Data Protection Legislation, if and to the extent that we process personal data in connection with the Services, you are the data controller and we are the data processor.
- 15.4. The Data Processing Appendix sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of personal data and categories of data subject.
- 15.5. Without prejudice to the generality of clause 15.2, you will:-
- 15.5.1. provide complete, accurate and lawful written instructions to us to govern the processing of personal data as initially set out in the Data Processing Appendix;
- 15.5.2. ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of this Contract;
- 15.5.3. notify us without undue delay on becoming aware of a personal data breach which has or may have an impact on the processing carried out by us or the written instructions for processing including the Data Processing Appendix.
- 15.6. Without prejudice to the generality of clause 15.2, we shall, in relation to any personal data processed in connection with the performance by us of our obligations under this Contract:-
- 15.6.1. process that personal data only on your written instructions (including the instructions in the Data Processing Appendix) unless we are required by the laws of any member of the European Union or by the laws of the European Union applicable to us to process personal data (“Applicable Laws”). Where we are relying on Applicable Laws as the basis for processing personal data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;
- 15.6.2. notify you if we believe that any data processing instruction we receive from you is in breach of the Data Protection Legislation and we shall not be obliged to follow such instruction (and shall not be liable for any delays in performing our obligations under this Contract) until such time as agreement can be reached between us and you as to how to proceed. If such agreement cannot be reached within 30 days of our notification to you, either party may terminate this Contract on notice to the other party;
- 15.6.3. ensure that we have in place appropriate technical and organisational measures, 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 our 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 us);
- 15.6.4. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 15.6.5. not transfer any personal data outside of the European Economic Area unless your prior written consent has been obtained and the following conditions are fulfilled:
- (i) you or us has provided appropriate safeguards in relation to the transfer;
- (ii) the data subject has enforceable rights and effective legal remedies;

- (iii) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) we comply with reasonable instructions notified to us in advance by you with respect to the processing of the personal data;
- 15.6.6. assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 15.6.7. notify you without undue delay on becoming aware of a personal data breach;
- 15.6.8. at your written direction, delete or return personal data and copies thereof to you on termination of this Contract unless required by Applicable Law to store the personal data;
- 15.6.9. maintain complete and accurate records and information to demonstrate our compliance with this clause 15; and
- 15.6.10. at your costs and on reasonable notice to us, allow for audits by you or your designated auditor.
- 15.7. You consent to us appointing third-party processors of personal data under this Contract and we shall provide you with a list of current sub-processors on request. We confirm that we have with the third-party processor a written agreement substantially on that third party's standard terms of business. As between you and us, we shall remain fully liable for all acts or omissions of any third-party processor appointed by us pursuant to this clause 15.
- 15.8. Any changes made or additions to your requirements in respect of your data processing requirements shall be dealt with via clause 9.
- 16. Warranties**
- 16.1. Each of the parties warrants to the other that it has full power and authority to enter into and perform this Contract.
- 16.2. We warrant that we shall perform the Services with reasonable care and skill.
- 16.3. We warrant that:-
 - 16.3.1. any Non Digital Deliverables will comply in all material respects with the Specification on Acceptance; and
 - 16.3.2. any Digital Deliverables will comply in all material respects with the Service Schedule for 30 days from Acceptance ("**Warranty Period**"),
 in either case such failure of the Deliverable to comply in all material respects with the Service Schedule being a "**Defect**".
- 17. Liability**
- 17.1. This Contract sets out the full extent of our obligations and liabilities in respect of the supply of the Services (including any Deliverables supplied).
- 17.2. All conditions, warranties or other terms concerning the Services or any goods which might otherwise be implied into this Contract or any collateral contract (whether by statute or otherwise) are hereby expressly excluded. In particular we cannot guarantee (and we specifically deny any implied or express representation) that any Digital Deliverable:-
 - 17.2.1. will be fit to operate uninterrupted and error free or that all errors can and will be corrected; or
 - 17.2.2. will operate in conjunction with any hardware items or software products or operate on platforms other than those expressly identified in the Specification as being compatible with the Digital Deliverable (in which case clause 16.3 shall apply).
- 17.3. Subject to clause 17.5:-
 - 17.3.1. if any of the Services do not conform with the warranty given under clause 16.2, subject to clause 17.4 we shall at our expense, endeavour to correct any such non performance promptly, or provide you with an alternative means of accomplishing the desired performance; and
 - 17.3.2. such correction or substitution shall be your sole and exclusive remedy for any breach of the warranty in clause 16.2.
- 17.4. We will not be liable for a breach of any warranty given under this Contract:-
 - 17.4.1. unless you give written notice of your claim within 14 days of the breach complained of arising; and
 - 17.4.2. unless we have been given a reasonable opportunity to examine the provision of Services or Deliverables to you;
 - 17.4.3. where you alter the Services or Deliverables without our written consent;
 - 17.4.4. if you have failed to follow our written or oral instructions;
 - 17.4.5. if the problem arises as a result of mis-use;
 - 17.4.6. notice of such Defect is not given before the end of the Warranty Period;
 - 17.4.7. our personnel's full, safe and uninterrupted remote or physical access and where necessary, administrative access rights is restricted or hindered in any way; and/or
 - 17.4.8. in relation to Digital Deliverables:-
 - (i) any non-performance is caused by any use of the Digital Deliverable or equipment, platform on which the Digital Deliverable sits is contrary to ours or third party instructions or modification or alteration of the Digital Deliverable or equipment or platform other than any of our third party suppliers' or our duly authorised personnel; or
 - (ii) you do not have a reasonable speed internet connection and compatible hardware and software as notified from time to time (this is not our responsibility).
- 17.5. If the Deliverables do not conform with the warranty given in clause 16.3:-
 - 17.5.1. subject to clause 17.4, the sole remedy for breach of warranty under clause 16.3 shall be the correction of Defects within a reasonable time from notification by you that a breach of the warranty in clause 16.3 has occurred;
 - 17.5.2. subject to payment of all sums owing by you under this Contract and to the provisions of clause 17.4, we shall use our reasonable endeavours to correct Defects. In relation to Digital Deliverables the foregoing shall only apply if the Defects are replicable by us, or to provide a software patch or to bypass around such Defect which shall be deemed a fix.
- 17.6. For the avoidance of doubt in relation to Digital Deliverables once the Warranty Period has expired, unless we have agreed to provide Support & Maintenance in accordance with clause 4.8 we have no

- obligation to provide any form of support or maintenance in respect of the Digital Deliverable.
- 17.7. Nothing in this Contract excludes or limits our liability to you for:-
- 17.7.1. death or personal injury resulting from our negligence;
 - 17.7.2. fraud or fraudulent misrepresentation; or
 - 17.7.3. for breach of the conditions implied by s2 of the Supply of Goods and Services Act 1982 or the Sale of Goods Act 1979 as amended.
- 17.8. Subject to clause 17.7, our maximum aggregate liability to you for any physical damage to your tangible property is £10,000.
- 17.9. Subject to clause 17.7, unless expressly stated otherwise in writing we shall not be liable in contract, tort (including without limitation negligence), restitution, statutory duty or otherwise, howsoever arising out of or in connection with the Services or this Contract for any:-
- 17.9.1. loss of profits or contracts;
 - 17.9.2. loss of income or revenue;
 - 17.9.3. loss of business opportunity or reputation;
 - 17.9.4. special or consequential loss or damage; or
 - 17.9.5. loss of, or damage to (including corruption of) data
- in each case whether direct or indirect.
- 17.10. Subject to clause 17.7 unless expressly stated otherwise in writing our maximum aggregate liability whether in contract, tort (including without limitation negligence), restitution, statutory duty or otherwise howsoever arising out of or in connection with this Contract shall not exceed the Fee.
- 17.11. If we provide you with advice or information or otherwise assist you, (“**Assistance**”) unless we expressly agree to provide and you agree to purchase consultancy services, we shall not be liable to you for Assistance whether in contract, tort (including negligence), for any collateral contract or any other grounds.
- 17.12. You agree and acknowledge that you have had the opportunity to inspect and examine any plans and specifications, configurations, proposals and Specifications prepared or explained by us or suggestions (“**Plans**”), as meeting your requirements. Accordingly, you agree and understand that we shall have no liability in respect of such Plans not meeting your requirements.
- 17.13. Except as expressly or specifically stated otherwise in this Contract we shall have no liability for any damage caused by errors or omissions in any data, information, instructions or scripts provided by you in connection with the Services, goods supplied or any actions taken by us at your direction.

18. Termination

- 18.1. Either party may terminate this Contract immediately in writing if:-
- 18.1.1. the other party commits a material breach of this Contract, which if remediable, has not been remedied within 14 calendar days of receiving notice of such breach; or
 - 18.1.2. the other party becomes Insolvent; or
 - 18.1.3. under clause 20.1.
- 18.2. We may terminate this Contract:
- 18.2.1. if you don't provide us with instructions, information within 14 days of our request, by giving you 7 days notice; or
 - 18.2.2. as set out in clause 6.6.2; or
 - 18.2.3. as set out in clause 7.7.4; or
 - 18.2.4. as set out in clause 12.1.6; or
 - 18.2.5. as detailed elsewhere in the Contract.

19. What happens on termination

- 19.1. On termination of this Contract for any reason, without prejudice to any of our rights or remedies:-
- 19.1.1. we shall invoice you for all Services performed and Deliverables supplied and for any expenses incurred to the date of termination and all sums due under this Contract shall become immediately payable;
 - 19.1.2. if we have received a prepayment from you this will be offset against any amounts owing as detailed in clause 19.1.1 above. Any surplus will then be refunded to you subject to clause 19.1.3;
 - 19.1.3. where you have made a prepayment and terminated before work has started, we will refund your prepayment less 10% of the prepayment as an administration fee;
 - 19.1.4. return of Confidential Information/ IPR etc
 - (i) subject to clause 19.1.4(iii) each party shall return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information or IPR belonging to the other party including (“**Termination Confidential Information/ IPR**”); and
 - (ii) if required by a party, the other party shall provide written evidence in the form of a letter signed by an authorised officer no later than 7 days after termination of this Contract that the Termination Confidential Information/ IPR has been destroyed and that it has not retained any copies;
 - (iii) each party may retain one copy of Termination Confidential Information/ IPR for audit purposes only (subject always to the confidentiality obligations in clause 14);
 - (iv) each party shall permanently delete any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation in the form of a letter signed by an authorised officer no later than 7 days after termination of this Contract that this software has been deleted;
 - 19.1.5. we shall be entitled to terminate any other contracts;
 - 19.1.6. without prejudice to any other of our rights or remedies if we have terminated under clause 18.1 or 18.2 then any licences granted by us under this Contract shall cease.
- 19.2. Any termination of this Contract (howsoever arising) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or to continue in force including without limitation clauses 3, 4, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20 and 21.

20. General

- 20.1. We shall not be liable for any failure or delay in performing our obligations as a result of a Force Majeure Event. If a Force Majeure Event continues for more than 14 days, either party shall be entitled to terminate this Contract by giving 7 days notice in writing.
- 20.2. You shall not partially or wholly assign or sub-contract any of your obligations under this Contract.
- 20.3. Subject to clause 15.7, we shall be able to assign or sub-contract all or part of our obligations under this Contract.
- 20.4. This Contract represents the entire agreement between the parties and supersedes all earlier warranties, representations, statements or agreements (whether written or oral). You acknowledge that in entering into this Contract, you have not relied on any, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Contract or not) other than as expressly set out in this Contract as a warranty.
- 20.5. Any notice under this Contract or required by statute, law or regulation shall be delivered in person, sent by registered mail, properly posted and fully pre-paid in an envelope or sent by facsimile to the respective parties at their respective registered or principal offices.
- 20.6. The parties intend that any person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third parties) Act 1999 (“Act”) to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists, or is available, apart from the Act.
- 20.7. If any provision is found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity shall not affect the rest of the Contract, which shall remain in full force and effect.
- 20.8. Failure by us to exercise or enforce any of our rights or remedies under this Contract shall not constitute a waiver of any such right or remedy, nor shall it prevent the exercise or enforcement of the right or remedy at any time.
- 20.9. If you are unhappy with any aspect of the Services, please contact us on the contact details set out in our website.
- 20.10. Unless otherwise expressly stated, nothing in these Terms shall create a partnership or agency between the parties.
- 20.11. If a dispute arises between the parties in relation to the Contract in any way, (except in relation to our Confidential Information or IPR in relation to which we reserve the right to take immediate legal action if required) the parties shall first try in good faith to amicably resolve the dispute within 28 days of the dispute arising.
- 20.12. Subject to clause 20.11, this Contract and any dispute arising out of or in connection with its subject matter or formation shall be governed by and construed in accordance with English law and the parties submit to the courts of England and Wales having exclusive jurisdiction in relation to such.

21. Meanings and interpretation

- 21.1. In these Terms the following words will have the following meaning

Acceptance as detailed in clause 8.6 in relation to Digital Deliverables and in relation to Non Digital Deliverables final sign off as may be required from time to time

Add Ons	any aspect or functionality of Digital Deliverables which is not in the Specification or Service Schedule
Additional Terms	as may be detailed in the Service Schedule from time to time
Confidential Information	all and any information, however it is conveyed that relates to the business, affairs, developments, trade secrets, know how, personnel and suppliers of a party, including all IPRs
Contract	as defined in clause 2.3
Copy	text intended for publication in the relevant format
Data Protection Legislation	any law, statute, regulation, rule or other binding restriction regarding the protection of individuals with regards to the processing of their personal data to which a party is subject, including the GDPR and any code of practice or guidance published by the Information Commissioner’s Office from time to time
Deliverables	any deliverables including any Non Digital Deliverable and/or any Digital Deliverable (as the case may be)
Detailed Specification	the detailed specification of any Deliverable based on the Outline Specification as agreed by the parties in accordance with these Terms
Digital Deliverables	digital deliverables such as websites as detailed in the Service Schedule
Fee	as detailed in the Service Schedule
Force Majeure Event	a Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following: (i) strikes lock-outs or other industrial action; (ii) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; (iii) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; (iv) impossibility of the use of public or private telecommunications networks; (v) the acts, decrees, legislation, regulations or restrictions of any government; and (vi) acts of third parties
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016 and any and all national legislation implementing the same into UK law from time to time
Insolvent	where (a) 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the IA 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 OR (being a partnership) has any partner to whom

any of the foregoing apply; (b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; (c) 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 (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; (d) 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); (e) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; (f) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party; (g) 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; (h) 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 (d) to clause (g) (inclusive); or (i) we reasonably suspect that any of the above events may be about to occur in respect of you

Open Source Software	any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source definition https://opensource.org/osd or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out a http://www.gnu.org/licenses/gpl/html), or anything similar, included or used in, or in the development of the Digital Deliverable, or with the Digital Deliverable is compiled or to which it is linked
Outline Specification	the outline specification of any Deliverables
Timetable	the document detailing proposed timescales for provision of the Services
Services	as detailed in the Service Schedule
Service Materials	Materials created by us during the provision of the Services that are not Deliverables
Service Term Specification	as detailed in the Service Schedule
Support & Maintenance	as detailed in the Service Schedule
UAT	user acceptance testing
we/us/our	ARKHITEKS LTD, Registered Office: Unit 2 Dominion Centre, Elliott Road, Bournemouth, Dorset, BH11 8JR, Company Registered Number: 10426539
Written Approval	any approvals or consents from you must be received by us via e-mail or as otherwise requested by us
you/ your	the customer as detailed in the Service Schedule
your Existing Materials	any Materials you provide to us
your Personnel	agent, officer, employee or third party
your responsibility	any responsibilities detailed in this Contract (your responsibilities to be construed accordingly)

21.2. References to "includes" or "including" shall be deemed to have the words "without limitation" inserted after them.

21.3. Unless otherwise stated, references to "days" means calendar days.

Data Processing Appendix

1. Processing by us
 - 1.1. Scope/Nature/Purpose of processing
 - 1.2. Duration of the processing
2. Types of personal data
3. Categories of data subject

IPR	intellectual property rights being, all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world
Materials	computer software, text, data, calculations, code, literature, photographs, documentation, designs, graphics, video, audio or other materials or creative content (on any media including any platform or website)
Non Digital Deliverables	any deliverables as detailed in the Service Schedule other than Digital Deliverables

DATA PROCESSING APPENDIX

To be completed by Arkhitekcs pursuant to clause 15.5.1

1. Processing by Arkhitekcs

1.1 Scope/ Nature/ Purpose of processing:

To exercise the terms of the Contract between Arkhitekcs and the Client. Arkhitekcs as an external digital consultancy may be required to process personal data in relation to the development of the new website. All personal data obtained by Arkhitekcs will be stored on its GDPR compliant data storage software and in accordance with its data processes.

1.2 Duration of the processing

Arkhitekcs will process personal data periodically or for the duration of any matter which requires the services of Arkhitekcs. Arkhitekcs may retain relevant personal data for up to 7 years in accordance with its contractual relationship with the Client. Where personal data is not relevant to the contractual relationship between the Client and Arkhitekcs, this will be deleted annually upon review. Upon the Client's request, all personal data will be deleted or the data will be transferred to them accordingly.

2. Types of personal data

Where necessary, all personal data relevant to the ongoing project with the Client may be processed by Arkhitekcs. Arkhitekcs will only obtain such personal data as is necessary to perform its contractual responsibilities.

3. Categories of data subject

- 'personal data' meaning any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier;
- 'special categories of personal data' meaning categories specifically include genetic data, and biometric data where processed to uniquely identify an individual.