

Terms and Conditions – Revised 5/9/18

OhSo Creative Limited

These Conditions set out the terms under which OhSo Creative will provide Services to the Client (as such terms are defined below). These Conditions will be supplemented from time to time by order confirmation forms setting out specific details relating to services requested by the Client and, as so supplemented, will apply to the exclusion of any other terms and conditions including any which the Client may attempt to introduce.

To the extent that the Client is deemed to be a consumer (as defined by the Unfair Contract Terms Act 1977) then these Conditions will not affect the rights of the Client as a consumer and will apply to the extent that applicable law allows.

These Conditions are divided into 6 parts. All parts may not apply in every case:

Part 1 applies in all cases

Part 2 applies where OhSo Creative is to provide software in connection with the Services

Part 3 applies where the Services include ongoing support and maintenance

Part 4 applies where the Services include domain registration

Part 5 applies where the Services include website design and development

Part 6 applies where the Services include print design

PART 1 – GENERAL PROVISIONS

1. Definitions

In these Conditions, the following expressions will have the following meanings, unless inconsistent with the context:

“Agreement” - the agreement between OhSo Creative and the Client for the provision of the Services formed by these Conditions and Order Confirmation(s)

“Business Day” - a day which is not a Saturday or Sunday or public or bank holiday in England and Wales

“Business Hours” - 9am to 5pm on each Business Day

“Client” - as identified on the Order Confirmation

“Client Materials” - data, text, images, photographs, graphics, videos, logos and other content and material, hardware or equipment provided by the Client in connection with the Agreement for use by OhSo Creative in providing the Services

“Client System” - The Client’s computer system upon which the Software is loaded or otherwise in connection with which the Services are provided

“Conditions” - the conditions (in six parts) to be read in conjunction with the Order Confirmation(s)

“OhSo Creative” - OhSo Creative Limited, registered in England (Company No. 07536808), whose registered office is at The Accounting House, Sheepbridge Lane, Chesterfield, S41 9RX.

“Defect” - any defect in systems having material effect on the Client’s use or operation of the Services

“Domain Services” - those domain registration and other related services (if any) provided to the Client by OhSo Creative pursuant to the Agreement, as described on a relevant Order Confirmation

“Fees” - the charges due to OhSo Creative under the Agreement in relation to the Services, as set out on the Order Confirmation(s)

“Intellectual Property Rights” any and all patents, trade marks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether registered or not or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to the same

“Netiquette” - generally accepted standards and codes of practice for use of the internet including not sending bulk unsolicited email, mail bombing or impersonating another person

“Order Confirmation” - the order confirmation form(s) submitted by OhSo Creative to the Client by email or otherwise in writing for the provision of the Services, in response to the Client’s order or request accepting the Proposal.

“Print Design Products” - any artwork, design work, photography or other printed material provided to or made available to the Client by OhSo Creative in connection with the Agreement excluding Client Materials

“Print Design Services” - those print design and other related services (if any) provided to the Client by OhSo Creative pursuant to the Agreement, as described on a relevant Order Confirmation

“Proposal” - the initial specification and description of the works to be carried out under this agreement

"Services" - those development, implementation, consultancy, hosting and other services (if any) provided to the Client pursuant to the Agreement, as described on a relevant Order Confirmation, together with any Support Services, Domain Services, Print Design Services and Website Design and Development Services

"SLA" - the level of performance to be provided by OhSo Creative to the Client in respect of the Services, as set out on the Order Confirmation(s)

"Software" any communications or other software provided to or made available to the Client by OhSo Creative in connection with the Agreement, but excluding Third Party Software

"Support Services" - those support and maintenance services provided to the Client pursuant to the Agreement, as described on a relevant Order Confirmation

"Support Hours" - the hours during which OhSo Creative will provide the Support Services, as set out on a relevant Order Confirmation

"Third Party Software" - any software identified as third party software (if any) to be provided to the Client pursuant to the Agreement, as set out in a relevant Order Confirmation

"Use the Software" - to load the Software onto and store and run it on the Client System in accordance with the terms of the Agreement

"Web Browser Software and Devices" - means only that web browsing software and or those devices specifically set out in the Proposal

"Website Design and Development Services" - the design and development services provided to the Client pursuant to the Agreement, as described on a relevant Order Confirmation

2. Interpretation

2.1 The headings used in the Agreement are inserted for convenience only and are not intended to be part of nor to affect the meaning or interpretation of any of the Agreement.

2.2 In the Agreement the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require.

2.3 The expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.

2.4 In the event of a conflict between any of these Conditions and any Order Confirmation, the conflict will be resolved according to the following order of priority: these Conditions then the Order Confirmation.

2.5 The words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context.

2.6 The Agreement (as varied in accordance with its terms) forms the entire understanding of the parties in respect of the matters dealt within it and supersedes all previous agreements, understandings and negotiations between the parties.

2.7 Unless otherwise provided in this agreement the parties do not intend that any of the terms of the Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not party to it.

2.8 References in these Conditions to clauses means clauses of these Conditions. References in these Conditions to the provisions of statutes or statutory instruments are deemed to include those provisions as amended or substituted

2.9 Unless expressly stated to the contrary, any reference to a specific statute includes any statutory extension or modification, amendment or re-enactment of that statute and any regulations or orders made under it, and any general reference to a statute includes any regulations or orders made under that statute.

3. Service Provision

3.1 The Services are described or referred to on the Order Confirmation(s).

3.2 OhSo Creative will use its reasonable endeavours to provide the Services in accordance with any timescale set out on the Order Confirmation(s).

3.3 OhSo Creative will not be liable for any failure to provide the Services resulting from any breach by the Client or its employees, agents or subcontractors of the Agreement.

3.4 OhSo Creative will not be obliged to provide any services not referred to on the Order Confirmation(s). Furthermore, OhSo Creative cannot provide the Services where the Client makes use of particular systems including communications systems identified in writing by OhSo Creative.

3.5 The terms of the Agreement form the entire agreement between OhSo Creative and the Client in relation to the Services and all other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law. The Client may not rely upon any representation made or given by any employee of OhSo Creative prior to the Agreement being entered into unless confirmed in the Agreement.

3.6 OhSo Creative may at any time and from time to time improve, correct or otherwise modify all or any of the Services (including substituting Software with software of similar specification) provided that such modification does not materially affect provision of the Services to the Client. OhSo Creative will endeavour to give the Client reasonable notice of any such modification, where this is reasonably practicable.

3.7 OhSo Creative will, upon arrangement and provided that no Fees are due and payable, allow the Client reasonable access to any co-located server hosted by OhSo Creative as part of the Services during Business Hours. Access will only be granted to the Client if OhSo Creative is given at least 3 Business Days' notice in writing that access is required and acceptance of that request has been confirmed in writing to the Client by Creative.

3.8 Without prejudice to its other rights and remedies, OhSo Creative may at its sole discretion suspend the provision of the whole or any part of the Services (temporarily or permanently) and will have no liability to provide the Services on the occurrence of any of the following events:

3.8.1 notified or unscheduled upgrade or maintenance of OhSo Creative's IT systems;

3.8.2 issue by any competent authority of an order which is binding on OhSo Creative which affects the Services;

3.8.3 if the Client fails to pay any Fees or any other sums owing to OhSo Creative by the Client when they fall due;

3.8.4 if an event occurs and OhSo Creative in its reasonable and considered opinion deems it to be appropriate to terminate the Agreement;

3.8.5 if the bandwidth or computer memory used by the Client in relation to the Services exceeds any agreed or stipulated level for three consecutive months and OhSo Creative determines in its sole discretion that suspension is necessary to protect all and any internet solutions provided by OhSo Creative from time to time;

3.8.6 if the size of an email or mailing list used by the Client exceeds any agreed or stipulated size, level or frequency and OhSo Creative determines in its sole discretion that suspension is necessary to protect all and any internet solutions provided by OhSo Creative from time to time; or

3.8.7 failure or deficiencies in the Client System referring but not limited to hardware, server corruption and security breaches. Where OhSo Creative suspends provision of the Services in accordance with clause 3.8.3, it will only be obliged to recommence provision during Business Hours and once the Client has paid all relevant outstanding sums in clear funds together with any relevant reinstatement fee (as published from time to time by OhSo Creative) and has accepted any revised payment terms requested by OhSo Creative (such as payment by direct debit).

3.9 The Client will provide to OhSo Creative those Client Materials identified on the Order Confirmation(s) within a reasonable time period taking account of the obligations of OhSo Creative under the Agreement.

3.10 The Client warrants that the Client Materials will be accurate in all material respects and will not knowingly include material which is illegal, the accessing holding transmitting or supplying of which would be a criminal offence or which is otherwise unlawful or in breach of any applicable law, code of practice or copyright applying to such materials. In particular, the Client warrants that all necessary licences, consents and waivers (including those from rights owners, performers and other contributors) are obtained and paid for by the Client. Without prejudice to the foregoing, OhSo Creative may decline to use any Client Materials on any reasonable grounds.

3.11 The Client will supply in a timely manner all information, instructions, review and feedback reasonably required by OhSo Creative in connection with the performance of its obligations under the Agreement and will appoint a representative who is fully empowered and authorised to provide the same.

3.12 At the discretion of OhSo Creative a deposit of 50% of the agreed initial project cost is required prior to the commencement of any of the Services.

4. Service Delivery

4.1 Whilst OhSo Creative will use reasonable commercial endeavours to ensure the Services are delivered in an appropriate manner, the Client acknowledges that, given the nature of such services, OhSo Creative cannot guarantee that the Services, when delivered via the internet, will be uninterrupted or error free.

4.2 To the fullest extent permitted by law and save as provided elsewhere in the Agreement, the Services and any Client Systems and Software are provided by OhSo Creative to the Client on an "as is" and "as available" basis and no warranty or representation (express or implied) of any kind are given in connection with the Agreement including as to satisfactory quality and fitness for a particular purpose. In particular, OhSo Creative give no warranty or representation that:

4.2.2 the Services will be provided on an uninterrupted, secure or error-free basis; or

4.2.3 any results obtained from use of the Services will be accurate, complete or current.

4.3 OhSo Creative warrants that it will provide the Services with reasonable care and skill and in accordance with any SLA and Proposal. OhSo Creative will not be liable for a breach of such warranty unless the Client notifies OhSo Creative in writing of such failure within 14 days of the Client becoming aware of the failure.

4.4 OhSo Creative will endeavor to ensure that any Services provided will function correctly on the server they are initially installed on and will function correctly when viewed with the Web Browsing Software and Device at the time of installation. OhSo Creative does not guarantee that the Services will function with any other browser software or devices, or with any future amendments or alterations to the Web Browsing Software and Devices taking place after the time of installation.

4.5 If the Client makes a valid claim against OhSo Creative based on a failure by OhSo Creative to comply with the warranty set out in clause 4.3 OhSo Creative may, at its option, take such steps as it deems necessary to remedy such failure or refund such part of the Fees as relates to such Services, provided that the liability of OhSo Creative under such warranty will in no event exceed one and a quarter times the amount of the Fees paid to OhSo Creative by the Client (excluding VAT and expenses) in the 12 month period prior to the date on which the Client makes the claim. If OhSo Creative complies with this clause, it will have no further liability for a breach of the said warranty.

5. Client Obligations

5.1 The Client agrees that it will:

5.1.1 immediately notify OhSo Creative on becoming aware of any unauthorised use of all or any of the Services and/or relevant part of the Client System;

5.1.2 not use the Services and/or Client System or allow them to be used for any unlawful purpose or for the publication, linking to, issue or display of any unlawful material (including any pirated software or any material which is obscene, pornographic, threatening, malicious, harmful, abusive, defamatory or which breaches the rights including Intellectual Property Rights of any third party or which is or encourages criminal acts or contains any virus, worm, trojan horse or other harmful code) whether under English law or regulation, the laws or regulations of the Client's country or any other place where the results of such purpose or the material in question can be accessed;

5.1.3 not use the Services and/or Client System or allow them to be used for the publication, linking to, issue or display of any material which in the absolute discretion of OhSo Creative may harm OhSo Creative or any of its clients or bring OhSo Creative into disrepute or which calls into question any action taken by OhSo Creative on the Client's behalf;

5.1.4 not use the Services and/or Client System or allow them to be used in breach of good Netiquette practices;

5.1.5 remove or prevent access to any material hosted on any Client System which causes or is likely to cause the Client to be in breach of the Agreement;

5.1.6 ensure that it has all necessary consents, permissions and licences to make use of the Services including registration and appropriate consents and approvals under the Data Protection Act 1998;

5.1.7 not provide any technical or other information obtained from OhSo Creative and/or relating to the Services to any person which the Client is aware or ought reasonably be aware may directly or indirectly lead to a breach of any law or regulation;

5.1.8 not, in breach of good Netiquette practices, use any service provided by any third party (including an internet web site and/or email) for the publication, linking to, issue or display of any material which refers to an internet web site hosted by OhSo Creative or any other products or services offered by OhSo Creative from time to time without OhSo Creative's prior written consent;

5.1.9 ensure that all material or data hosted by OhSo Creative on any web site operated by the Client from time to time or communicated through such site or using the Client System is checked for viruses and other harmful code and has appropriate security patches applied;

5.1.10 save as provided in any Order Confirmation, be responsible for keeping regular and full back ups of all material and data hosted by OhSo Creative on any web site or other system operated by the Client from time to time including the Client System;

5.1.11 comply with any security policy notified to it from time to time by OhSo Creative and, in particular, ensure that all passwords and user names provided to it by OhSo Creative are at all times kept confidential, used properly and not disclosed to unauthorised people. If the Client has any reason to believe that any password or user name has become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way or of any other breach of security then the Client will inform OhSo Creative immediately;

5.1.12 monitor its bandwidth in relation to the use of Services and report to OhSo Creative any use of bandwidth over and above those agreed or stipulated levels set out in the Order Confirmation;

5.1.13 be entirely liable for all activities conducted and charges incurred under its passwords and user names whether authorised by it or not and the Client acknowledges that OhSo Creative shall not be liable for any loss of confidentiality or for any damages arising from the Client's inability to comply with these Conditions;

5.1.14 not use any part of the OhSo Creative premises except as is reasonably necessary to inspect and maintain any co-located server hosted as part of the Services and the Client shall ensure that such server is kept in good condition and is in its original condition upon the termination of such hosting;

5.1.15 ensure that the Client obtains and maintains insurance over all parts of the Client System which are located on the premises of OhSo Creative and to provide evidence that such insurance is in place, upon OhSo Creative's demand;

5.1.16 ensure that all communication details which it provides to OhSo Creative are at all times true, current, accurate and complete. The Client will promptly notify OhSo Creative of any change to such details and acknowledges that OhSo Creative will not be liable for any loss suffered or incurred by the Client as a result of its failure to notify such changes to OhSo Creative; and

5.1.18 ensure that its systems (including the Client System) meet any minimum system specifications notified to the Client from time to time.

5.2 The Client acknowledges that it has appropriate knowledge of how the internet functions, the systems and products provided to it in connection with the Agreement and what types of use and content are and are not acceptable, some of which are referred to in clause 5.1.2 The Client acknowledges that OhSo Creative shall have no obligation to:

5.2.1 train the Client on its use of the Services;

5.2.2 manipulate any material which the Client wishes to and/or does post on any web site or other system it operates (including any Client System) or any communication which it issues or sends in connection with any Services; or

5.2.3 validate or vet such material for usability, legality, content or correctness. The Client also acknowledges that the services and products provided by OhSo Creative are standard packages which are not tailored to specific requirements of the Client, unless confirmed in writing by OhSo Creative to the contrary.

5.3 The Client will promptly provide to OhSo Creative and/or its consultants, employees and agents such information and assistance as they may reasonably require in order to be able to carry out the Services.

5.4 The Client will procure all necessary rights from third parties (including intellectual property licences of computer software and website content including ringtones and music) which are from time to time required in order for OhSo Creative to be able legally to provide the Services.

5.5 If, in OhSo Creative's opinion, the Client is in breach of the provisions of clauses 5.1.2 to 5.1.4 then OhSo Creative may without prejudice to its other rights and remedies immediately by written notice to the Client:

5.5.1 suspend provision of the Services;

5.5.2 terminate the Agreement; or

5.5.3 amend or remove any Client Materials and/or content appearing on any website or other system hosted by OhSo Creative on behalf of the Client (including any Client System). OhSo Creative may also notify appropriate public authorities (governmental or otherwise including the police or other enforcement authority) of any such breach, where it deems necessary.

5.6 Where as part of the Services the Client is entitled (having obtained OhSo Creative's prior written consent) to resell the whole or any part of the Services to a third party then the Client will:

5.6.1 procure such third party's compliance with and acceptance of these Conditions;

5.6.2 be fully responsible for the acts and omissions of any such third party; and

5.6.3 indemnify OhSo Creative for any losses it suffers as a result of such acts or omissions.

6. Payment Terms

6.1 The Fees are payable to OhSo Creative subject to the following conditions:

6.1.1 Fees payable monthly or yearly will be paid in advance and will not be refundable in whole or part if the Agreement or relevant part is terminated during the period to which the payment relates;

6.1.2 any set up fee will (unless stated to be included within later payments) be payable immediately;

6.1.3 additional Fees will become payable if the Client exceeds agreed or stipulated bandwidth use levels.

6.1.4 at the sole discretion of OhSo Creative, 50% of the estimate of fees may be payable prior to commencement of the Services

6.2 Any total sum for the fees set out in an Order Confirmation is (unless stated in the Order Confirmation to be a fixed and firm amount) an estimate of the fees only and not a fixed price quotation.

6.3 Any sums payable by the Client to OhSo Creative under the Agreement are exclusive of value added tax or any similar taxes, levies or duties, which will be added to such sums and be payable by the Client at the appropriate rate.

6.4 The Client agrees to pay Creative Steam's invoices within 30 days of invoice date or according to the due date of the invoice if earlier. If invoices are not settled in full by then, the Client will without prejudice to its other rights and remedies (including the right to suspend the Services under clause 3.8.3) be liable to pay interest on any sum outstanding from the due

date for payment at the annual rate of 2% above the base lending rate from time to time of the Co-operative Bank plc accruing on a daily basis until payment is made whether before or after any judgment.

6.5 All sums payable to OhSo Creative under the Agreement must be paid in full with no set off or deduction.

6.6 OhSo Creative has a general and particular lien over the Client System until all claims and money payable by the Client to OhSo Creative on any account whatsoever have been received in full clear funds. If the Client fails to discharge any lien within a reasonable time from the date of notice of exercise then the Client System may be sold in or towards satisfaction of that lien and OhSo Creative will account to the Client for any excess.

6.7 OhSo Creative may make a search in relation to the Client with a credit reference agency (and make other credit enquiries from time to time), keep a record of that search and enquiries, and share that information with third parties. OhSo Creative may also make enquiries about the principle directors/proprietors of the Client with a credit reference agency.

6.8 Where the Client authorises payment of any of the Fees by credit card then OhSo Creative may deduct other amounts becoming payable to it under the Agreement under that credit card without obtaining additional authorisation from the Client.

6.9 Without prejudice to any other of its rights and remedies, OhSo Creative will be entitled to remove the Client's data from its systems if any amount due under the Agreement is not paid within 14 days of its due date for payment. OhSo Creative is not required to back up such data or return the same to the Client prior to any such removal or following termination of the Agreement.

7. Confidential Information

7.1 Each party will (unless contrary to law):

7.1.1 keep confidential all information obtained from the other under or in connection with the Agreement ("Information");

7.1.2 not disclose any Information to any third party without the prior written consent of the other except to such persons and to such extent as may be strictly necessary for the performance of the Agreement;

7.1.3 not use any Information otherwise than for the purposes of the Agreement.

7.2 The provisions of clause 7.1 do not apply to Information which:

7.2.1 is or becomes public knowledge (otherwise than by breach of this clause); or

7.2.2 was in the possession of the party concerned without restriction as to its disclosure before receiving it from the disclosing party; or

7.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; and nothing in this clause 7 prevents either party from disclosing any Information for a proper purpose to a public authority or any regulatory body, or to a court of law in the United Kingdom or elsewhere in legal proceedings, or to its senior management, its auditors, bankers, lawyers or other professional advisers.

7.3 The provisions of this clause 7 will continue to apply notwithstanding termination of the Agreement.

7.4 The Client, by entering into the Agreement, consents to OhSo Creative sending to the Client by whatever means the Company deems appropriate (whether by email or otherwise) information concerning new products and other services that OhSo Creative may from time to time offer.

8. Intellectual Property

8.1 The Client acknowledges and agrees that it will not own or acquire ownership of any Intellectual Property Rights in or relating to the Services or created in performing the Services and that it will have no rights in or to the Services other than the rights expressly granted by the Agreement.

8.2 The Client will indemnify and keep OhSo Creative indemnified from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands, legal costs (on a full indemnity basis) and judgments which OhSo Creative incurs or suffers as a consequence of infringement of any Intellectual Property Right of any third party arising directly or indirectly from:

8.2.1 the provision by OhSo Creative of Services making use of information or specifications supplied by the Client;

8.2.2 the Client's failure to procure all necessary rights from third parties which are from time to time required in order for OhSo Creative to be able legally to provide the Services; or

8.2.3 the use by OhSo Creative in connection with the Agreement of the Client System and the Client Materials.

8.3 No Intellectual Property Rights created or acquired by OhSo Creative will transfer or be assigned to the Client unless OhSo Creative and the Client have signed a written assignment document to that effect.

9. Liability

9.1 The provisions of this clause 9 and the provisions of clauses 4 and 25 set out the entire liability of OhSo Creative (including any liability for the acts or omissions of its consultants, employees, agents and authorised representatives) to the Client in respect of:

9.1.1 any breach of the Agreement; and

9.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.

9.2 Nothing in the Agreement excludes or limits the liability of OhSo Creative for death or personal injury caused by the negligence of OhSo Creative, fraud or a breach of section 12 of the Sale of Goods Act 1979.

9.3 Subject to clauses 9.2 the total liability of OhSo Creative in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Agreement is limited to:

9.3.1 £50,000 for loss of or damage to tangible property; and

9.3.2 for any other kind of loss, one and a quarter times the amount of sums paid by the Client to OhSo Creative pursuant to the Agreement (excluding VAT and expenses) during the preceding 12 month period.

9.4 OhSo Creative will not be liable to the Client in contract, tort, misrepresentation or otherwise (including negligence), for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever, or for any loss of profit, loss of business, loss of contract, depletion of goodwill or otherwise (whether direct or indirect), and whether or not caused by the negligence of OhSo Creative or its employees, agents or authorised representatives, which arises out of or in connection with the Agreement.

9.5 The Client acknowledges that the allocation of risk in the Agreement reflects the price paid for the Services and that it is not within the control of OhSo Creative how or for what purposes they are used.

10. Client Indemnity

The Client will fully indemnify and keep OhSo Creative and its officers, partners, employees and agents fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by it and arising from any of the following:

10.1 the Client's breach of the Agreement, negligence or other default;

10.2 the operation or break down of any IT systems owned or used by the Client including the Client System; or

10.3 the Client's use or misuse of the Services.

11. Force Majeure

Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of the Agreement arising by reason of force majeure which means, in relation to either party, circumstances beyond the reasonable control of that party including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, network failure, systems fault, unauthorised use or access to the IT systems of OhSo Creative or the Client, explosion, flood, epidemic, lock outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions, to the extent outside of its reasonable control.

12. Term and Termination

Without prejudice to the remaining provisions of this clause 12 and any other rights and remedies available to OhSo Creative:

12.1 OhSo Creative will provide the Services for the period of 12 months from the date of the relevant Order Confirmation or, where different, any other period of supply stated on the Order Confirmation (such period being termed the "Initial Period") and will continue beyond that period, subject to termination by:

12.1.1 the Client upon serving 30 days' written notice on OhSo Creative following completion of OhSo Creative's prescribed template procedures for terminating the whole or any part of the Agreement; or

12.1.2 OhSo Creative serving 30 days' written notice on the Client to expire at any time after the Initial Period.

12.2 OhSo Creative may immediately terminate the Agreement (or at its option, any part of it) by notice in writing to the Client if the Client fails to pay to OhSo Creative any sum due under the Agreement on the due date for payment.

12.3 Either party may terminate the Agreement (or, at its option, any part of it) forthwith by notice in writing to the other if the other party:

12.3.1 Is in material breach of the Agreement and fails (where the breach is capable of remedy) to remedy the breach within 30 days of the receipt of a request in writing to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of the Agreement;

12.3.2 becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986;

12.3.3 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

12.3.4 has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income, has passed a resolution for its winding-up, or has a petition presented to any court for its winding-up or for an administration order; or

12.3.5 has ceased or threatened to cease to trade.

13. Consequences of Termination

13.1 Termination of the Agreement is without prejudice to the rights and duties of either party accrued prior to termination.

13.2 The clauses of the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

13.3 OhSo Creative may without notice remove the Client's data from its systems after expiry of 5 Business Days following termination. For the purposes of this clause, the date of termination will be either the date that OhSo Creative receives signed authorisation from the Client instructing cancellation of account or the date of expiry of notice of termination served in accordance with these Conditions.

13.4 Upon termination of the Agreement, the Client will forthwith:

13.4.1 cease to use the Software and Services;

13.4.2 erase the Software from the Client System and certify to OhSo Creative that this has been done;

13.4.3 return to OhSo Creative any hardware or other equipment loaned to the Client in connection with the Services or any other materials and equipment owned by OhSo Creative; and

13.4.4 pay all outstanding invoices raised by OhSo Creative pursuant to the Agreement and pay for all work in progress not previously paid for on a reasonable pro-rata basis (subject to receipt of an invoice for the same from OhSo Creative).

13.5 In the event of termination of the Agreement by the Client part way through the Initial Period, the Client remains obliged to pay for Services comprising the provision of dedicated server hosting for the remainder of that period.

13.6 Where following termination, OhSo Creative is unable to cancel any registration of a domain name registered on behalf of the Client, it may levy a minimum charge to cover the cost of the domain registration fee.

13.7 Where the Client services include the purchase of licensing for software by OhSo Creative on behalf of the client, in the event of termination of the agreement by the client, OhSo Creative are unable to refund any proportion of the software and/or licensing fees incurred.

14. Severability

The illegality, invalidity or unenforceability of any provision of the Agreement will not affect the legality, validity or enforceability of the remainder. If any such provision is found by any court or competent authority to be illegal, invalid or unenforceable, the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

15. Waiver

15.1 The failure or delay by either party in exercising any right, power or remedy of that party under the Agreement will not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under the Agreement will not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

15.2 Any waiver by either party of a breach of or default under any of the terms of the Agreement by the other party is not deemed a waiver of any subsequent breach or default and in no way affects the other terms of the Agreement.

16. Assignment and Subcontracting

The Client may not assign the benefit or delegate the burden of the Agreement nor sub-license any of its rights under the Agreement (including to its Associated Company) without the prior written consent of OhSo Creative. Any consent provided by OhSo Creative under this clause is given on condition that the assignee or licensee, as the case may be, agrees to comply with the terms of the Agreement as if they were the Client. OhSo Creative may sub-contract or assign any or all of its rights and obligations under the Agreement.

17. Amendments

No variation or amendment to the Agreement (including any Order Confirmation) is effective unless agreed in writing and signed by an authorised representative of OhSo Creative.

18. Relationship of the Parties

18.1 None of the provisions of this Agreement shall be deemed to constitute a partnership between the parties and neither party shall be responsible for any act or omission of the other or have the right or authority to bind the other in any way.

18.2 Nothing in this Agreement shall confer any rights on any person pursuant to the Contract (Rights of Third Parties) Act 1999.

19. Notices

Any notice to be given or made by either party under or in connection with the Agreement must be in writing and given or made to the other party at its address stated in the Order Form or to such other address as either party may from time to time notify to the other. Every notice, if so addressed, is deemed to have been duly given or made, if delivered by hand, upon delivery at the address of the relevant party, if sent by prepaid first class post, two Business Days after the date of posting and if transmitted by facsimile, at the time of transmission (provided a confirmatory letter is sent by prepaid first class post) provided that, where, in accordance with the above provisions, any notice would otherwise be deemed to be given or made on a day which is not a Business Day or after 4.00 p.m. on a Business Day, such notice shall be deemed to be given or made at 9.00 a.m. on the next Business Day. OhSo Creative may additionally serve notice on the Client under or in connection with the Agreement by email to the Client by sending an email to the contact email address stated on the Order Confirmation(s) or, in the case of a Client for whom OhSo Creative has registered a domain name, to webmaster@[registered domain name], and in such a case the email will be deemed sent once transmitted from OhSo Creative's email server.

20. Law and Jurisdiction

The construction, performance and validity of the Agreement will be governed by English law and the English courts have jurisdiction to settle any disputes which may arise out of or in connection with it.

PART 2 - ANCILLARY SYSTEMS SUPPLY

21. Provision of Software

21.2 In consideration of payment by the Client of the Fees, OhSo Creative will supply to the Client one copy of the Software and Third Party Software in object code form.

21.3 OhSo Creative grants to the Client the non-exclusive right to Use the Software for so long as the relevant Services continue to be provided subject to the remaining terms of these Conditions.

22. Client's Undertakings

The Client undertakes:

22.1 to maintain accurate and up-to-date records of the number and locations of all copies of the Software;

22.2 to take good care of the Software; and

22.3 not to provide or otherwise make available the Software in whole or in part (including program listings, object and source program listings, object code and source code) in any form to any person other than the Client's employees without the prior written consent of OhSo Creative.

23. Copying

The Client may make only so many copies of the Software as are reasonably necessary for operational security and to Use the Software. Such copies and the media on which they are stored will remain the property of OhSo Creative, and the Client will ensure that all such copies bear OhSo Creative's proprietary notices. The provisions of Part 2 of these Conditions will apply to such copies as it applies to the Software.

24. Alterations

24.1 Except to the extent and in the circumstances expressly required to be permitted by OhSo Creative by law, the Client may not:

24.1.1 alter, modify, adapt or translate the whole or any part of the program listings, object and source program listings, object code or source code in the Software in any way whatsoever;

24.1.2 permit the whole or any part of the Software to be combined with or become incorporated in any other computer programs; or

24.1.3 decompile, disassemble or reverse engineer the Software; nor attempt to do any of these things.

24.2 To the extent that the law applicable to the Agreement grants the Client the right to decompile the Software in order to obtain information necessary to render the Software interoperable with other computer programs used by the Client, OhSo Creative undertakes to make that information readily available to the Client. OhSo Creative may impose reasonable conditions (including a reasonable fee) for doing so. In order to ensure that the Client receives the appropriate information, the Client must first give to OhSo Creative sufficient details of the Client's objectives and the other computer programs concerned

25. Performance

25.1 The Client acknowledges that:

25.1.1 software in general is not error-free, and agrees that the existence of such errors will not constitute a breach of the Agreement; and

25.1.2 the Software will operate only in conjunction with the Client System and other operating systems that may be notified by OhSo Creative in writing from time to time.

25.2 OhSo Creative will use its reasonable endeavours to check the Software for the most commonly known viruses prior to delivery to the Client. However, the Client is solely responsible for virus scanning the Software and OhSo Creative gives no warranty that the Software will be free from viruses.

25.3 OhSo Creative warrants that (subject to the other provisions of the Agreement) the Software will as at delivery be free from material errors which prevent the Client's use of the Services and conform in all material respects with any applicable specification agreed in writing between the Client and OhSo Creative. OhSo Creative will not be liable for a breach of this warranty:

25.3.1 if the error in question has been caused by any modification variation or addition to any part of the Ancillary Systems not performed by OhSo Creative, their incorrect use by the Client, or use with or in connection with systems with which they are incompatible; or

25.3.2 where the Client does not notify OhSo Creative in writing of a failure within 14 days of becoming aware of the same.

25.4 If the Client makes a valid claim against OhSo Creative based on the failure by OhSo Creative to comply with the warranty set out in clause 25.3 OhSo Creative will at its option take such steps as it deems necessary to remedy such failure or refund such part of the Fees as relates to the defective Software.

25.5 If OhSo Creative complies with clause 25.4 it will have no further liability for a breach of the warranty set out in clause 25.3.

26. Third Party Software

Any Third Party Software is supplied to the Client on the basis of the relevant third party's standard licence terms provided to the Client with the relevant Third Party Software and with which the Client agrees to comply.

PART 3 - SUPPORT SERVICES

27. Provision of Support Services

27.1 OhSo Creative will provide the Support Services to the Client upon the terms and conditions set out in this Part 3 and Part 1 of these Conditions.

27.2 OhSo Creative will only be obliged to provide the Support Services during Support Hours.

27.3 The obligation of OhSo Creative to provide Support Services will not extend to:

27.3.1 rectification of lost or corrupted data;

27.3.2 attendance to faults arising from the Client's failure to comply with OhSo Creative's instructions with regard to the use of the Services or any documentation or manuals provided by OhSo Creative, or operator error or omission; or

27.3.3 attendance to faults attributable to the use or interaction of an Ancillary System with other software or systems with which it is not compatible.

27.3.4 OhSo Creative will charge its standard employee charge out rates (as published from time to time by OhSo Creative) in addition to the Fees for the carrying out any remedial work

27.4 OhSo Creative will use its reasonable endeavours to provide the Support Services in accordance with the SLA.

27.5 OhSo Creative will operate a helpline service to assist the Client and its staff in relation to the Client's use of the Services and the identification and correction of Defects. Assistance via this helpline service may be requested by the Client and provided by OhSo Creative, by telephone, email or helpdesk ticket system provided by OhSo Creative. The service will be obtained by telephoning, e-mailing such numbers or addresses or logging into such ticketing systems, as are notified by OhSo Creative from time to time.

27.6 If a Defect occurs, the following procedure will be followed:

27.6.1 the Client will notify OhSo Creative of the Defect and provide such information and assistance as OhSo Creative reasonably requires in connection with such Defect; and

27.6.2 OhSo Creative will analyse the Defect and use its reasonable endeavours to rectify the Defect in question or propose a solution in connection with the same, within ten Business Days of being notified of the same under clause 27.6.1

PART 4 - DOMAIN SERVICES

28. Service Provision

28.1 OhSo Creative will provide the Domain Services to the Client upon the terms and conditions set out in this Part 4 and Part 1 of these Conditions.

28.2 The Client undertakes and warrants to OhSo Creative that the registration of any domain name requested by it (a "Requested Domain"):

28.2.1 and the manner in which it is to be directly or indirectly used will not infringe any third party rights; and

28.2.2 is not being made in bad faith or could be considered to be an abusive registration under the ICANN or Nominet dispute resolution policies, whichever is appropriate. The Client also confirms and warrants that any Requested Domain is not being registered and will at no time whatsoever be used for any unlawful purpose.

28.3 The Client acknowledges that, whilst OhSo Creative will use its reasonable endeavours to register a Requested Domain, OhSo Creative will not be obliged to accept any request to register or continue to process any registration of a Requested Domain.

28.4 The Domain Services are limited to forwarding the application for registration to the relevant naming authority, providing reasonable administration services in relation to the application and notifying the result of the application to the Client within a reasonable period after communication from the authority. OhSo Creative will use reasonable endeavours to notify the Client of any renewal dates however OhSo Creative accepts no liability for the loss of registration of any Requested Domain.

28.5 It is the sole responsibility of the Client to ensure that renewals of registration for a Requested Domain are dealt with. OhSo Creative accepts no liability for any losses incurred arising out of the Client's failure to renew the registration.

28.6 OhSo Creative makes no representations or warranties (expressed or implied) of any kind (and they are expressly disclaimed) with respect to availability or likelihood of registration of any Requested Domain. The Client acknowledges that OhSo Creative cannot guarantee the reservation or registration of any Requested Domain and that the registration of such domain name will be subject to any registration requirements of the appropriate registry.

28.7 The Client will check that the domain name as reported on all documents sent to the Client (such as invoices and e-mail notifications) is spelt correctly. The Client will notify OhSo Creative of any incorrect spellings of a Requested Domain promptly and in any event within 24 hours of receiving such document.

28.8 The Client will at all times comply with the terms and conditions (from time to time subsisting) applying to the registration of domain names published by the relevant naming authority (including the domain dispute resolution policy of that authority) and any other authority having similar force.

28.9 If the Client wishes to transfer ownership of a Requested Domain then it will procure that all necessary consents to that transfer are obtained and will deliver up to OhSo Creative, on demand, documentary evidence of that all such consents have been obtained. The Client agrees that prior to transferring ownership of a Requested Domain to another person (the "Transferee") the Client will procure that the Transferee agrees in writing to be bound by the terms of the Agreement. A Requested Domain will not be transferred until OhSo Creative receives such written assurances as it requires that the Transferee is bound by the terms of the Agreement.

28.10 OhSo Creative will not transfer ownership of a Requested Domain until all Fees attributable to the Domain Services which are due have been paid by the Client to OhSo Creative.

28.11 OhSo Creative may from time to time change the registrar that a Requested Domain is held with, at its discretion and without notice to the Client.

28.12 The Client agrees and acknowledges that OhSo Creative will make registration information provided by the Client in relation to the Requested Domain available to ICANN, Nominet or any other appropriate registration authority, the registry administrators, and other third parties as applicable laws may require or permit including the police or other enforcement authority. The Client further acknowledges that OhSo Creative may make publicly available, or directly available to third party vendors, some, or all, of the domain name registration information provided, for purposes of inspection (such as through the WHOIS service) or other purposes as required or permitted by ICANN, Nominet and applicable law. The Client consents to any and all such disclosures, whether during or after the term of registration of the Requested Domain. The Client irrevocably waives any and all claims and causes of action arising from such disclosure or use of the domain name registration information by OhSo Creative.

28.13 OhSo Creative will only allow a domain name owned or managed by the Client to be attached to the ISP tag of OhSo Creative if the Client has an active hosting account with OhSo Creative or is holding the domain name within a 123-reg holding account.

PART 5 – WEBSITE DESIGN AND DEVELOPMENT

29. Service Provision

29.1 OhSo Creative will provide the Website Design and Development Services to the Client upon the terms and conditions set out in this Part 5 and Part 1 of these Conditions

29.2 Prior to providing the Website Design and Development Services the Client shall pay to OhSo Creative a deposit equal to 50% of the total estimate for the Services

29.3 Once OhSo Creative have completed the design and development of the Site the Client will have 14 days to confirm to OhSo Creative whether or not the Site is acceptable.

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

29.3.1 the expiry of 14 days from delivery of the Site to the Client; or

29.3.2 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.

30. Client Responsibilities

30.1 The Client acknowledges and accepts that it bears the sole responsibility, legal or otherwise for the content of all material appearing on the Clients website in accordance with the provisions of clause 5.

30.2 The Client acknowledges that OhSo Creative's ability to provide the Website Design and Development Services is dependent on the full and timely co-operation of the Client (which the Client agrees to provide), as well as the accuracy and completeness of any information and data the Client provides to OhSo Creative.

30.3 Accordingly, the Client shall provide OhSo Creative with access to, and use of, all information, data and documentation reasonably required by OhSo Creative for the performance by OhSo Creative of their obligations under the Agreement.

31. Term and Termination

31.1 Subject to the terms of clause 12 OhSo Creative will provide the Website Design and Development Services from the relevant date on the Order Confirmation and shall (subject to earlier termination pursuant to clause 12) terminate automatically on acceptance of the Site and payment of all outstanding sums OR the first anniversary of the relevant date on the Order Confirmation, unless the parties agree in writing to extend the term of the Agreement.

PART 6 – PRINT DESIGN SERVICES

32. Service Provision

32.1 OhSo Creative will provide the Print Design Services to the Client upon the terms and conditions set out in this Part 6 and Part 1 of these Conditions.

32.2 OhSo Creative agrees to design and print the Print Design Products for the Client as follows:

32.2.1 Design the Print Design Products according to the instructions provided by the Client and confirmed in the Order Confirmation

32.2.2 Print the Print Design Products according to the instructions provided by the Client and confirmed in the Order Confirmation

32.2.3 Make every effort to carry out the Print Design Services and ensure that the services are carried out in a responsible and professional manner.

32.2.4 All Print Design Products supplied by OhSo Creative will be of merchantable quality and fit for their intended purpose in accordance with the Sale of Goods Act 1979. No further or other obligation is undertaken as to the description, quality or fitness of goods supplied.

33. Client Responsibilities

33.1 The Client will be responsible for highlighting and correcting any errors or omissions before any Print Design Products (supplied or produced by OhSo Creative) are printed by OhSo Creative and the Client will not hold OhSo Creative or any of its suppliers responsible if errors or omissions are not discovered and corrected before production of the Clients Print Design Products.

33.2 The Client must specifically authorise OhSo Creative to print the Print Design Products. Once the Client has given such authority OhSo Creative will not be liable for any further copy errors in the Print Design Products.

33.3 The Client will (at their own expense) keep duplicate copies of all input material and insure against accidental damage and loss. OhSo Creative will have no liability for any such loss or damage, however caused and OhSo Creative shall not be responsible for returning material to the Client.