

HUGA DIGITAL MARKETING LIMITED

TERMS AND CONDITIONS

Updated 1st April 2018

Huga Digital Marketing Limited - Terms and Conditions

Please read these terms and conditions carefully. They set out the basis upon which we provide services. By requesting, ordering, receiving, using or accessing any of our services, you agree to be bound by all these terms and conditions. We will usually ask for your express consent to these terms and conditions before we begin working with you.

1. Definitions and interpretation

1.1 In the Agreement:

"Acceptable Use Policy" means Huga Digital Marketing Limited acceptable use policy in the form supplied or made available to the Client from time to time;

"Agreement" means an agreement between the parties incorporating:

- (a) these terms and conditions;
- (b) one or more additional Schedules to these terms and conditions;
- (c) a Brief agreed between the parties or, if no Brief is agreed between the parties, in any other document agreed in writing between the parties; and
- (d) the Acceptable Use Policy,

together with any amendments to the Agreement from time to time;

"Brief" means a document issued by HUGA DIGITAL MARKETING LIMITED and signed or otherwise agreed by each of the parties, specifying the scope of the Services and other matters relating to the Agreement, together with any project pricing document issued by HUGA DIGITAL MARKETING LIMITED;

"Business Day" means any weekday, other than a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:00 on a Business Day;

"Charges" means all amounts payable by the Client to HUGA DIGITAL MARKETING LIMITED under or in relation to the Agreement as set out in one or more Briefs or otherwise agreed in writing by the parties, including any amounts referred to as deposits;

"Client" means the company, firm or person specified in the Brief;

"Effective Date" means:

- (a) if there is a Brief or other agreed document, the date of agreement of that document (subject to any validity period for the Client's agreement); and
- (b) otherwise, the date when HUGA DIGITAL MARKETING LIMITED either sends an email to the Client confirming that the Agreement is in force or begins providing the Services;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, third party hardware and software failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and neighbouring and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Ongoing Services" means Services that are ongoing and are not by their nature susceptible to completion;

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"HUGA DIGITAL MARKETING LIMITED" means Huga Digital Marketing Limited, a company incorporated in England and Wales (registration number 06959982) having its registered office at Unit 4, Riverview Business Park, Station Road, Forest Row, East Sussex RH185FS;

"Schedule" means a schedule attached to these terms and conditions;

"Service Description" means the description or specification of a Service set out in a Brief or otherwise agreed in writing by the parties;

"Services" means the services provided or to be provided under the Agreement, as specified in a Service Description;

"Standard Rates" means HUGA DIGITAL MARKETING LIMITED's standard time-based charging rates applicable upon the date that the time is recorded; and

"Term" means the term of the Agreement.

1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

1.3 References in the Agreement to a Clause are to a clause of the Agreement; and references in a Schedule to Paragraphs are to the paragraphs of that Schedule, unless otherwise stated.

1.4 The Clause headings do not affect the interpretation of the Agreement.

1.5 In the Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

2. Agreement and Term

2.1 The Agreement will come into force on the Effective Date and will continue in force indefinitely, unless and until terminated in accordance with Clause 11 or 12.

2.2 The parties acknowledge and agree that they may enter into one or more separate (and separately terminable) contracts in respect of the Services, as follows:

- (a) in respect of each Brief agreed, the parties shall enter into a separate contract under these terms and conditions; and
- (b) if a Brief applies to more than one Schedule, then the parties shall enter into a separate contract under these terms and conditions in respect of each applicable Schedule,

unless the parties have agreed otherwise in writing.

3. Services

3.1 HUGA DIGITAL MARKETING LIMITED will supply the Services to the Client during the Term.

3.2 The Client will:

- (a) provide HUGA DIGITAL MARKETING LIMITED with:
 - (i) all co-operation, information and documentation; and
 - (ii) all access to the premises, computers, servers and systems of the Client,

reasonably required for the provision of the Services;

- (b) be responsible for procuring any third party co-operation reasonably required for the provision of the Services; and
 - (c) be responsible for obtaining suitable licences of third party software that are required for the full use of the Services,
- except in each case to the extent expressly provided otherwise in the Agreement.

3.3 It is the Client's responsibility to keep any passwords relating to the Services confidential and secure, and to change such passwords on a regular basis. The Client will notify HUGA DIGITAL MARKETING LIMITED immediately if it becomes aware that a password relating to the Services is or may have been compromised or misused.

- 3.4 Except to the extent that the Agreement expressly provides otherwise:
- (a) the Services are provided to the Client only; and
 - (b) the Client must not resell or otherwise provide the Services, or make the Services available, to any third party.

3.5 If HUGA DIGITAL MARKETING LIMITED undertakes, with the agreement of the Client, any work for the Client that is outside the scope of the Services that have been agreed by the parties, such work shall:

- (a) be treated as part of the Services under the Agreement; and
- (b) be chargeable at the Standard Rates.

3.6 The Client must comply with the terms of the Acceptable Use Policy, and must ensure that all persons using the Services under the authority of the Client or by means of the Client's account(s) comply with the terms of the Acceptable Use Policy and the other provisions of the Agreement.

4. Charges and payment

4.1 HUGA DIGITAL MARKETING LIMITED shall issue invoices for the Charges to the Client:

- (a) in accordance with the provisions of the relevant Schedule or Brief; or
- (b) if the time for invoicing is not specified in the relevant Schedule or Brief, from time to time, in advance or in arrears, in its sole discretion.

4.2 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.

4.3 The Client will pay Charges to HUGA DIGITAL MARKETING LIMITED in cleared funds:

- (a) on or before the date or dates set out in the relevant invoice, Schedule or Brief; or
- (b) where no such date or dates are set out in the relevant invoice, Schedule or Brief, before the due date for provision of the relevant Services and in any event within 14 days following the date of issue of the relevant invoice.

4.4 Charges must be paid by bank transfer or cheque (using such payment details as are notified by HUGA DIGITAL MARKETING LIMITED to the Client from time to time).

4.5 HUGA DIGITAL MARKETING LIMITED may vary:

- (a) the Standard Rates; and/or
- (b) any other Charges payable under the Agreement excluding fixed Charges agreed in respect of web design and development services,

by giving to the Client not less than 30 days' written notice of the variation.

5. Late payments

5.1 If the Client does not pay any amount properly due to HUGA DIGITAL MARKETING LIMITED under or in connection with the Agreement, HUGA DIGITAL MARKETING LIMITED may:

- (a) charge the Client: (i) interest on the overdue amount at the rate of 8% per year above the UK base rate of Barclays Bank Plc from time to time (which interest will accrue daily and be compounded at the end of each calendar month); and (ii) if the matter is passed to a debt collection agency, an administrative fee equal to 15% of the overdue amount; or
- (b) claim interest and statutory compensation from the Client pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

5.2 HUGA DIGITAL MARKETING LIMITED shall have the right to set off any amount owed by the Client to HUGA DIGITAL MARKETING LIMITED against any amount owed by HUGA DIGITAL MARKETING LIMITED to the Client, in each case whether the amount is owed:

- (a) under the Agreement or any other contract; or
- (b) as a result of any liability arising out of the Agreement or any other contract,

and HUGA DIGITAL MARKETING LIMITED may exercise its right under this Clause by giving written notice of such exercise to the Client.

5.3 If the Client fails to pay to HUGA DIGITAL MARKETING LIMITED any amount owed under:

- (a) the Agreement; or
- (b) any other contract or arrangement between the parties,

by the due date, then HUGA DIGITAL MARKETING LIMITED may suspend, withhold and/or render inaccessible any or all of the Services until such time as payment is received, without prejudice to HUGA DIGITAL MARKETING LIMITED's other rights under the Agreement.

6. Intellectual Property Rights

Save as expressly provided in the Agreement:

- (a) all Intellectual Property Rights in:
 - (i) the Services and any improvements to the Services; and
 - (ii) any works and materials produced by or on behalf of HUGA DIGITAL MARKETING LIMITED in the course of the provision of the Services,

are and will remain, between the parties, the exclusive property of HUGA DIGITAL MARKETING LIMITED; and

- (b) the Client shall have no right or licence to exercise or exploit such Intellectual Property Rights.

7. Warranties

7.1 The Client warrants to HUGA DIGITAL MARKETING LIMITED that it has the legal right and authority to enter into and perform its obligations under the Agreement.

7.2 HUGA DIGITAL MARKETING LIMITED warrants to the Client that:

- (a) it has the legal right and authority to enter into and perform its obligations under the Agreement; and
- (b) it will perform its obligations under the Agreement with reasonable care and skill.

7.3 The Client acknowledges that:

- (a) HUGA DIGITAL MARKETING LIMITED does not purport to provide any legal advice under the Agreement or in relation to the Services, and HUGA DIGITAL MARKETING LIMITED does not warrant that the Services will not give rise to any civil or criminal legal liability on the part of the Client or any other person;
- (b) whilst HUGA DIGITAL MARKETING LIMITED will use

reasonable technological measures and procedures to secure its servers and systems, those servers and systems may from time to time be subject to attack by hackers, and HUGA DIGITAL MARKETING LIMITED does not warrant that its servers and systems will never be subject to a security breach; and

- (c) hardware failures may from time to time affect the provision of the Services, and, unless otherwise agreed, HUGA DIGITAL MARKETING LIMITED's only obligation in respect of hardware failures will be to use reasonable endeavours to promptly repair or replace the relevant hardware,

and subject to Clause 9.1 and HUGA DIGITAL MARKETING LIMITED's compliance with the requirements of this Clause 7.3, HUGA DIGITAL MARKETING LIMITED shall not be liable to the Client in respect of any loss or damage arising out of a failure of the Client to take professional legal advice, any hacker attacks on HUGA DIGITAL MARKETING LIMITED's servers and systems, or any hardware failures.

7.4 Save to the extent that HUGA DIGITAL MARKETING LIMITED expressly agrees otherwise in writing, HUGA DIGITAL MARKETING LIMITED shall not be responsible for ensuring that Client websites and software applications are secure against hacker attacks and exploits or malicious software infections.

7.5 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

8. Indemnity

The Client hereby indemnifies HUGA DIGITAL MARKETING LIMITED, and undertakes to keep HUGA DIGITAL MARKETING LIMITED indemnified, against any and all liabilities, losses, damages, costs and expenses (including legal expenses and amounts paid in settlement of any legal claim) arising in connection with, or directly or indirectly out of, any breach by the Client of any term of the Agreement.

9. Limitations and exclusions of liability

9.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

9.2 The limitations and exclusions of liability set out in this Clause 9 and elsewhere in the Agreement:

- (a) are subject to Clause 9.1; and
- (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

9.3 HUGA DIGITAL MARKETING LIMITED will not be liable to the Client in respect of any loss of profits, income, revenue, use, production or anticipated savings.

9.4 HUGA DIGITAL MARKETING LIMITED will not be liable to the Client for any loss of business, contracts or commercial opportunities.

9.5 HUGA DIGITAL MARKETING LIMITED will not be liable to the Client for any loss of or damage to goodwill or reputation.

9.6 HUGA DIGITAL MARKETING LIMITED will not be liable to the Client for any losses arising out of a Force Majeure Event.

9.7 HUGA DIGITAL MARKETING LIMITED will not be liable to the Client in respect of any special, indirect or consequential loss or damage.

9.8 HUGA DIGITAL MARKETING LIMITED will not be liable to the Client in respect of any loss or corruption of any data, database or software.

9.9 HUGA DIGITAL MARKETING LIMITED's liability to the Client in relation to any event or series of related events commencing during the 12 month period following the Effective Date will not exceed the greater of:

- (a) GBP 1,000; and
- (b) an amount equal to the aggregate of the Charges that are or will be paid and payable by the Client to HUGA DIGITAL MARKETING LIMITED under the Agreement during that period, assuming the Agreement continues in force to the end of that period.

9.10 HUGA DIGITAL MARKETING LIMITED's liability to the Client in relation to any event or series of related events commencing after the 12 month period following the Effective Date will not exceed the greater of:

- (a) GBP 1,000; and
- (b) the total amount paid and payable by the Client to HUGA DIGITAL MARKETING LIMITED under the Agreement during the 12 month period immediately preceding the event or events giving rise to the claim.

10. Data protection

10.1 The Client warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to HUGA DIGITAL MARKETING LIMITED under the Agreement, and that the processing of that Personal Data by HUGA DIGITAL MARKETING LIMITED for the purposes of and in accordance with the terms of the Agreement will not breach any applicable laws (including the Data Protection Act 1998).

10.2 HUGA DIGITAL MARKETING LIMITED warrants that:

- (a) it will act only on instructions from the Client in relation to the processing of any Personal Data performed by HUGA DIGITAL MARKETING LIMITED on behalf of the Client; and
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing, and against loss or corruption, of Personal Data processed by HUGA DIGITAL MARKETING LIMITED on behalf of the Client.

11. Termination for convenience

Either party may terminate the Agreement immediately by giving written notice of termination to the other party, providing that the date of termination falls after the end of any minimum Agreement period specified in any applicable Schedule or Brief.

12. Termination for cause

12.1 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:

- (a) commits any material breach of any term of the Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
- (b) persistently breaches the terms of the Agreement.

12.2 HUGA DIGITAL MARKETING LIMITED may terminate the Agreement immediately by giving written notice to the Client if the Client fails to pay any amount due to be paid to HUGA DIGITAL MARKETING LIMITED under the Agreement by the due date.

12.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting, or makes or proposes to make any arrangement or composition, with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up; or
 - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 13. Effects of termination**
- 13.1 Termination of the Agreement will not affect either party's accrued rights (including accrued rights to issue invoices and rights to be paid) as at the date of termination.
- 13.2 Subject to Clause 13.1, upon termination all the provisions of the Agreement will cease to have effect, save that:
- (a) the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 5, 8, 9, 13, 14 and 17; and
 - (b) the provisions of the Schedules and Briefs expressed to survive and continue to have effect will do so (in accordance with their terms or otherwise indefinitely).
- 13.3 If the Agreement is terminated by HUGA DIGITAL MARKETING LIMITED under Clause 11 or by the Client under Clause 12.1 or 12.3 (but not in any other case) the Client will:
- (a) be entitled to a refund of any Charges paid by the Client to HUGA DIGITAL MARKETING LIMITED in respect of any Services which were to be performed after the date of effective termination; and
 - (b) be released from any obligation to pay any Charges otherwise payable by the Client to HUGA DIGITAL MARKETING LIMITED in respect of any Services which were to be performed after the date of effective termination,
- such amount or amounts to be calculated by HUGA DIGITAL MARKETING LIMITED using any reasonable methodology.
- 13.4 Save as provided in Clause 13.3, the Client will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to HUGA DIGITAL MARKETING LIMITED.
- 14. Non-solicitation**
- The Client will not, without HUGA DIGITAL MARKETING LIMITED's prior written consent, during the Term or for a period of 6 months after the end of the Term, directly or indirectly, either for itself or for any other person, firm or company, solicit for employment any employee or contractor of HUGA DIGITAL MARKETING LIMITED involved in the performance of the Services.
- 15. Notices**
- 15.1 Any notice given under the Agreement must be in writing (whether or not described as a "written notice" in the Agreement) and must be delivered personally, sent by courier, sent by post or sent by email:
- (a) in the case of notices from the Client to HUGA DIGITAL MARKETING LIMITED, to Unit 4, Riverview Business Park, Station Road, Forest Row, East Sussex RH185FS or accounts@huga.co.uk; and
 - (b) in the case of notices from HUGA DIGITAL MARKETING LIMITED to the Client, to the address or email address set out in the Brief,
- or an alternative address or email address notified by the receiving party to the sending party in accordance with this Clause 15.
- 15.2 Notices sent by email shall only be effective if and when the recipient sends to the sender a written acknowledgement of receipt of the email notice.
- 15.3 In the case of notices delivered personally, sent by courier or sent by post, the notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) if the notice is delivered personally or sent by courier, at the time of delivery; and
 - (b) if the notice is sent by post, 48 hours after posting.
- 16. Variation**
- 16.1 The Agreement may not be varied except:
- (a) if the Agreement is for Ongoing Services, by HUGA DIGITAL MARKETING LIMITED giving written notice of the variation to the Client, providing that the Client has the opportunity of terminating the Agreement under Clause 12 or in accordance with the terms of the Schedules before the variation takes effect;
 - (b) by a written document signed or otherwise agreed in writing by or on behalf of each of the parties; or
 - (c) as expressly set out in the other provisions of the Agreement.
- 16.2 HUGA DIGITAL MARKETING LIMITED may change any Service Description by giving to the Client written notice of the change, providing that:
- (a) the Service Description is not in respect of web design or development services; and
 - (b) any change made under this Clause 16.2 must not have a material negative effect on the value of the relevant Services to HUGA DIGITAL MARKETING LIMITED's customers generally.
- 17. General**
- 17.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 17.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 17.3 Nothing in the Agreement will constitute a legal partnership, agency relationship or contract of employment between the parties.
- 17.4 The Client hereby agrees that HUGA DIGITAL MARKETING LIMITED may freely assign any or all of its rights and/or obligations under the Agreement to any successor to all or a substantial part of the business of HUGA DIGITAL MARKETING LIMITED from time to time. The Client may not, without the prior written consent of HUGA DIGITAL MARKETING LIMITED, assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 17.5 HUGA DIGITAL MARKETING LIMITED may subcontract any of its obligations under the Agreement to any third party.

- 17.6 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 17.7 Subject to Clause 9.1:
- (a) the Agreement constitutes the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
 - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.
- 17.8 The Agreement will be governed by and construed in accordance with the laws of England; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

Schedule: Web Design & Development Services

This Schedule governs any web development services that HUGA DIGITAL MARKETING LIMITED supplies or agrees to supply to the Client.

1. Definitions

In this Schedule:

"**Acceptance Criteria**" means the following criteria in respect of the Deliverables:

- (a) conforming in all material respects with the Specification; and
- (b) not exhibiting any Defects;

"**Client Works**" means all works and materials provided by or on behalf of the Client to HUGA DIGITAL MARKETING LIMITED for incorporation into the Deliverables;

"**Defect**" means a defect, error or bug having a material adverse effect on the appearance, operation or functionality of the Deliverables, but excluding any defect, error or bug caused by or arising as a result of:

- (a) an act or omission of the Client, or an act or omission of one of the Client's employees, officers, agents or sub-contractors;
- (b) a defect, error or bug in the Client Works; or
- (c) an incompatibility between the Deliverables and any other application, program or software (other than the Client Works and the Third Party Works);

"**Deliverables**" means any website, web application, software program or module, database and/or part thereof to be designed and developed by HUGA DIGITAL MARKETING LIMITED for the Client in accordance with the terms of the applicable Brief;

"**Delivery Date**" means the date for the making available of the completed Deliverables to the Client, as specified in the Brief;

"**Design Elements**" means the visual appearance of the Deliverables (including page layouts, artwork, photographs, logos, graphics, animations, video works and text comprised in the Deliverables), but excluding:

- (a) the Client Works; and
- (b) the Third Party Works;

"**Software Elements**" means the Deliverables, but excluding:

- (a) the Design Elements;
- (b) the Client Works; and
- (c) the Third Party Works;

"**Specification**" means the specification for the Deliverables set out in the Brief, as reasonably elaborated by HUGA DIGITAL MARKETING LIMITED during the provision of the Web Development Services;

"**Third Party Works**" means the works and materials comprised in the Deliverables, the Intellectual Property Rights in which are owned in whole or part by a third party (including open source works and materials, but excluding the Client Works);

"**Warranty Period**" means a period of 90 days following the date of delivery of Deliverables to the Client; and

"**Web Development Services**" has the meaning given to it in Paragraph 2.1.

2. Web Development Services

2.1 HUGA DIGITAL MARKETING LIMITED will:

- (a) design, develop and deliver the Deliverables;
- (b) incorporate the Client Works and Third Party Works into the Deliverables (if applicable);
- (c) keep the Client informed of the progress of the

development of the Deliverables; and

- (d) provide the Client with reasonable access to the Deliverables during their development,

(the "**Web Development Services**").

2.2 HUGA DIGITAL MARKETING LIMITED will use reasonable endeavours to perform the Web Development Services in accordance with any timetable set out in the Brief. However, HUGA DIGITAL MARKETING LIMITED does not guarantee that any particular timetable will be met.

2.3 The Client must supply to HUGA DIGITAL MARKETING LIMITED all those Client Works that are specified in the Brief or reasonably requested by HUGA DIGITAL MARKETING LIMITED.

2.4 The Client must fulfil its obligations under Paragraph 2.3 in accordance with the timetable set out in the Brief or, if no timetable is set out, promptly following the receipt of a written request for the relevant Client Works from HUGA DIGITAL MARKETING LIMITED.

2.5 HUGA DIGITAL MARKETING LIMITED shall not be in breach of the Agreement by virtue of any delay in the performance of its obligations under the Agreement arising out of a breach by the Client of Paragraph 2.4.

2.6 If the Client is more than 30 days late in performing any obligations under Paragraph 2.4 then, notwithstanding any other provision of the Agreement:

- (a) HUGA DIGITAL MARKETING LIMITED may invoice the Client for all Charges in respect of the Web Development Services, irrespective of whether those Charges would otherwise have been invoiced at a later date;
- (b) the Client shall thereafter be responsible for incorporating the relevant Client Works into the Deliverables and HUGA DIGITAL MARKETING LIMITED shall cease to be responsible (if it previously was responsible) for incorporating the relevant Client Works into the Deliverables; and
- (c) the Client shall be deemed to be in material breach of the Agreement.

2.7 The Client hereby grants to HUGA DIGITAL MARKETING LIMITED a licence to copy, store and otherwise use the Client Works for the purposes of fulfilling its obligations and exercising its rights under the Agreement.

3. Delivery

3.1 HUGA DIGITAL MARKETING LIMITED will use reasonable endeavours to make available the Deliverables to the Client for acceptance testing on or before the Delivery Date.

3.2 HUGA DIGITAL MARKETING LIMITED shall use reasonable endeavours to ensure that the Deliverables meet the Acceptance Criteria.

3.3 The Client must notify HUGA DIGITAL MARKETING LIMITED of any failure of the Deliverables to meet the Acceptance Criteria before the end of the Warranty Period, and HUGA DIGITAL MARKETING LIMITED shall have no obligation to correct any such failure that is not notified before the end of the Warranty Period. Upon and following the termination of the Agreement, this Paragraph 3.3 will continue to apply.

4. Intellectual Property Rights

4.1 From the date of delivery of the Deliverables by the Client, HUGA DIGITAL MARKETING LIMITED hereby assigns to the Client all its Intellectual Property Rights in the Design Elements. These rights are assigned for the whole term of such rights, together with all reversions, revivals, extensions and renewals, and this assignment includes the right to bring proceedings for past infringement of the assigned Intellectual Property Rights.

4.2 All Intellectual Property Rights in the Software Elements will, as between the parties, be the property of HUGA DIGITAL MARKETING LIMITED and, from the date specified in Paragraph 4.1, HUGA DIGITAL MARKETING LIMITED grants to the Client a non-exclusive worldwide licence to use, store and adapt the Software Elements for the purpose of publishing and operating one or more websites, subject always to the other terms of the Agreement, and providing that:

(a) the Client must not sell, resell, rent, lease, supply, distribute or redistribute the Software Elements; and

(b) the Client only sub-licenses the rights licensed under this Paragraph for the limited purposes, and subject to the express restrictions, specified in this Paragraph 4.2.

4.3 The Client acknowledges that the Deliverables may include Third Party Works. The Third Party Works will, at the option of HUGA DIGITAL MARKETING LIMITED, be:

(a) supplied in accordance with the relevant licensor's standard terms for online use (which may be open source terms); or

(b) supplied on licence terms notified by HUGA DIGITAL MARKETING LIMITED to the Client or incorporated into the Third Party Works (which may be open source terms),

and the Client acknowledges that the use of Third Party Works outside the scope of the licence may result in the Client being legally liable for breach of licence or Intellectual Property Rights infringement.

4.4 Notwithstanding any other provision of the Agreement, the assignments and licences granted by HUGA DIGITAL MARKETING LIMITED under this Schedule are subject to the payment by the Client of the Charges for the Web Development Services in full and on time. In the event that the Client owes any amount to HUGA DIGITAL MARKETING LIMITED under this Schedule and fails to pay that amount to HUGA DIGITAL MARKETING LIMITED within 30 days of receiving a notice:

(a) requiring it to do so; and

(b) specifying that the assignments will revert and the licences will terminate if the amount remains unpaid,

then HUGA DIGITAL MARKETING LIMITED may immediately revert any or all assignments and terminate any or all licences granted by HUGA DIGITAL MARKETING LIMITED under this Schedule by giving written notice of reversion and/or termination to the Client.

4.5 Subject to Paragraph 4.4, upon and following the termination of the Agreement, any licence granted by HUGA DIGITAL MARKETING LIMITED to the Client will continue notwithstanding termination, and this Paragraph 4 will continue to apply.

5. Additional warranties and warranty limitations

5.1 HUGA DIGITAL MARKETING LIMITED warrants to the Client that the use of the Design Elements and the Software Elements by the Client in accordance with the terms of the Agreement will not infringe the Intellectual Property Rights (excluding patent rights) of any third party.

5.2 The Client acknowledges that complex software is never wholly free from defects, errors and bugs, and HUGA DIGITAL MARKETING LIMITED gives no warranty that the Deliverables will be wholly free from such defects, errors and bugs.

5.3 The Client acknowledges that HUGA DIGITAL MARKETING LIMITED will design the Deliverables to work with the web browser and web server technologies identified in the Specification, and HUGA DIGITAL MARKETING LIMITED does not warrant that the Deliverables will work with any other web browser or web server technologies. Alterations to Deliverables to work with other web browser and web server technologies shall be subject to additional Charges.

5.4 The Client further acknowledges that complex software is never entirely secure, and HUGA DIGITAL MARKETING LIMITED does not warrant that the Deliverables will be entirely secure. Providing that HUGA DIGITAL MARKETING LIMITED takes reasonable care in relation to the security of the Deliverables and subject to Clause 9.1, HUGA DIGITAL MARKETING LIMITED shall not be liable to the Client for any loss or damage arising out of a security defect in the Deliverables.

5.5 For the avoidance of doubt, HUGA DIGITAL MARKETING LIMITED does not warrant or represent that the Deliverables will meet the Specification or be free from Defects after the end of the Warranty Period, and the Client acknowledges that any changes to the Deliverables after the end of the Warranty Period shall be chargeable and subject to the separate agreement of HUGA DIGITAL MARKETING LIMITED.

6. Charges for Web Development Services

6.1 The Charges in respect of the Web Development Services, and the dates or milestones upon or after which HUGA DIGITAL MARKETING LIMITED may issue invoices in respect of the Web Development Services, are as set out in the Brief.

6.2 If the Brief specifies that a certain number of revisions of a design are included in the agreed Charges, then the Client must pay HUGA DIGITAL MARKETING LIMITED in respect of any further design revisions at the Standard Rates.

6.3 If a milestone or development goal is not achieved as a result of any failure or delay in the Client performing its obligations under the Agreement, then:

(a) HUGA DIGITAL MARKETING LIMITED may issue an invoice for any Charges that would be payable by the Client upon the achievement of that milestone goal – such an invoice may be issued at any time after the date upon which HUGA DIGITAL MARKETING LIMITED reasonably expected the milestone or goal to be achieved; and

(b) the Client must pay to HUGA DIGITAL MARKETING LIMITED additional Charges at the Standard Rates in respect of HUGA DIGITAL MARKETING LIMITED personnel time that is wasted or unproductive as a result of the failure or delay, or is spent dealing with or contacting the Client in respect of the failure or delay.

6.4 If both:

(a) the amount of time incurred by the personnel of HUGA DIGITAL MARKETING LIMITED in providing any element of the Web Development Services exceeds the amount of time allocated in the Brief; and

(b) the additional time incurred is a consequence of a change in the Specification requested by the Client, or any factor beyond the reasonable control of HUGA DIGITAL MARKETING LIMITED,

then HUGA DIGITAL MARKETING LIMITED may increase the Charges in respect of the Web Development Services commensurately, on the basis of the Standard Rates, by giving written notice of the increase to the Client.

6.5 Additional Charges payable under Paragraph 6.4 may be invoiced by HUGA DIGITAL MARKETING LIMITED upon or at any time following the giving of the notice referred to in that Paragraph.

6.6 In addition to the Charges for the Web Development Services, the Client must pay any third party fees specified in the Brief in relation to the use of Deliverables.

7. Termination

7.1 If this Schedule applies, neither party may terminate the Agreement under Clause 11 before the later of:

(a) the delivery of the Deliverables to the Client; and

(b) the payment of all Charges payable under this Schedule to HUGA DIGITAL MARKETING LIMITED in cleared funds,

except in accordance with Paragraph 7.2.

7.2 The Client may terminate the Agreement in respect of Web Development Services at any time by giving to HUGA DIGITAL MARKETING LIMITED written notice of termination, and if this happens the Client shall:

(a) be entitled to a refund of any Charges paid by the Client to HUGA DIGITAL MARKETING LIMITED in respect of any Services which were to be performed after the date of effective termination; and

(b) be released from any obligation to pay any Charges otherwise payable by the Client to HUGA DIGITAL MARKETING LIMITED in respect of any Services which were to be performed after the date of effective termination,

such amount or amounts to be calculated by HUGA DIGITAL

MARKETING LIMITED using any reasonable methodology, providing that the maximum combined refund and release will be equal to 70% of the Charges payable under this Schedule.

7.3 If this Schedule applies under the Agreement, but no other Schedules apply, then the Agreement will automatically terminate upon the completion of the matters referred to in Paragraph 7.1.

8. Content delivery

The Client must ensure that all content is delivered to the specified deadline within the specification schedule. If content is delayed, HUGA DIGITAL MARKETING LIMITED hold the right to:

- a) Raise all remaining invoices in respect of the total agreed quotation, irrespective of if the project has met completion
- b) Charge for on-going charges specified such as hosting and maintenance
- c) Delay the original project deadline due to other project work being undertaken.
- d) Sign off the project and mark all work undertaken after this point as additional billable work, including all content adding.
- e) Charge the client interest at 10% APR, based on the total quotation value.

9. Publicity

The Client agrees that HUGA DIGITAL MARKETING LIMITED may identify the Client as a customer of HUGA DIGITAL MARKETING LIMITED on its websites and in its marketing and publicity materials, and may feature the Deliverables in case studies and other marketing and publicity materials.

Schedule: Support and Maintenance Services

This Schedule governs any support services or maintenance services that HUGA DIGITAL MARKETING LIMITED supplies or agrees to supply to the Client.

1. Definitions

In this Schedule:

"**CMS**" means the core Joomla content management system used by the Supported Website, excluding any contributed modules;

"**Maintenance Services**" means the application of minor version updates to the CMS and any other update services that HUGA DIGITAL MARKETING LIMITED agrees in writing to provide to the Client;

"**Supported Website**" means the website or websites in respect of which HUGA DIGITAL MARKETING LIMITED agrees in a Brief to provide Maintenance Services and/or Support Services; and

"**Support Services**" means the provision of technical support by telephone and email in relation to a Supported Website.

2. Maintenance Services

2.1 If HUGA DIGITAL MARKETING LIMITED has agreed to provide Maintenance Services under this Schedule, then:

- (a) HUGA DIGITAL MARKETING LIMITED shall test new minor version updates to the CMS before applying them to the Supported Website;
- (b) providing that the testing of updates does not indicate any problems, HUGA DIGITAL MARKETING LIMITED shall apply such updates to the CMS within a reasonable period following their release; and
- (c) HUGA DIGITAL MARKETING LIMITED shall notify the Client following the application of an update.

2.2 The Client acknowledges that the Maintenance Services do not include:

- (a) major version updates to the CMS; or
- (b) updates to contributed modules or any other parts of the Supported Website other than the CMS,

unless HUGA DIGITAL MARKETING LIMITED expressly agrees otherwise, in which case additional Charges shall apply.

2.3 The Client further acknowledges that

- (a) whilst the provision of Maintenance Services may reduce the risk of a successful hacker attack on, or malicious software infection of, the Supported Website, it does not eliminate those risks; and
- (b) notwithstanding HUGA DIGITAL MARKETING LIMITED's testing procedures, the application of an update through Maintenance Services may from time to time have a negative impact upon the functionality of the Supported Website, in which case HUGA DIGITAL MARKETING LIMITED shall use all reasonable endeavours to resolve the issue (whether by reverting to a previous version of the software or otherwise).

3. Support Services

3.1 HUGA DIGITAL MARKETING LIMITED may provide Support Services to the Client upon request:

- (a) within any "Warranty Period" specified in respect of the Supported Website in the Web Development Services Schedule, free of charge (subject to Paragraph 4.1); or
- (b) otherwise, subject to the payment of applicable Charges.

3.2 During Business Hours, the Client may request Support Services by email (to support@pople.eu) or telephone; outside Business Hours, the Client may request Support Services in respect of emergency issues only by email (to support@pople.eu).

3.3 HUGA DIGITAL MARKETING LIMITED will use reasonable endeavours to:

- (a) promptly respond to requests for Support Services; and
- (b) resolve issues relating to the Supported Website and reported by the Client,

providing that, except as expressly agreed elsewhere in the Agreement, HUGA DIGITAL MARKETING LIMITED does not guarantee to resolve such issues within any particular time period or at all.

4. Charges

4.1 If:

- (a) HUGA DIGITAL MARKETING LIMITED provides Support Services to the Client under Paragraph 3.1 or otherwise agrees to provide Support Services on a free-of-charge basis; and
- (b) HUGA DIGITAL MARKETING LIMITED learns that the problem that led to the request for Support Services was caused by the acts or omissions of the Client or a third party (excluding HUGA DIGITAL MARKETING LIMITED's subcontractors),

then the Client must pay Charges to HUGA DIGITAL MARKETING LIMITED in respect of those Support Services, excluding the first hour.

4.2 Charges in respect of Support Services shall be at the Standard Rates.

Schedule: Web Marketing Services

This Schedule governs any search engine optimisation, social media marketing, pay-per-click management and/or email marketing management services that HUGA DIGITAL MARKETING LIMITED supplies or agrees to supply to the Client.

1. Definitions

In this Schedule:

"Promoted Website" means the website or websites specified in the Brief that are to be promoted using the Web Marketing Services; and

"Web Marketing Services" means the Services supplied or to be supplied by HUGA DIGITAL MARKETING LIMITED to the Client under this Schedule.

2. Search engine and social media marketing

2.1 This Paragraph 2 applies if the Brief specifies that HUGA DIGITAL MARKETING LIMITED will provide search engine and/or social media marketing services. If this Paragraph applies, HUGA DIGITAL MARKETING LIMITED will provide such services in accordance with the Brief.

2.2 Search engine and social media marketing services may include some or all of the following:

- (a) modification of the Promoted Website (including adding, deleting and/or altering text, images, pages, meta-tags, titles, mark-ups, style sheets, scripts, internal and external links, and the Promoted Website structure);
- (b) the creation and publication of material relating to the Promoted Website on other websites;
- (c) link building and link baiting;
- (d) the creation and management of accounts on social media websites, and the publication of materials through such accounts; and/or
- (e) other website promotion techniques, whether known at the date of the Agreement or discovered or disseminated thereafter.

2.3 The Client acknowledges that:

- (a) search engine algorithms will change from time to time, which may affect the Promoted Website's rankings in the search engine results pages, and HUGA DIGITAL MARKETING LIMITED has no control over such changes;
- (b) it can take many months for the Web Marketing Services to have any significant effects upon the ranking of a Promoted Website in the search engine results pages;
- (c) website promotion is an ongoing task and, should the Client terminate the Agreement and/or stop promoting the Promoted Website, that would be likely to have a negative impact upon the effects of the Web Marketing Services;
- (d) HUGA DIGITAL MARKETING LIMITED will not be responsible for any alterations to the Promoted Website made by the Client or any third party that reverse or affect changes made to the Promoted Website by HUGA DIGITAL MARKETING LIMITED as part of the Web Marketing Services;
- (e) the promotion of the Promoted Website may lead to higher traffic levels and bandwidth requirements for the Promoted Website, and the Client will be responsible for paying for such requirements; and
- (f) notwithstanding the Web Marketing Services, the Promoted Website's search engine results, page rankings and traffic levels may fall as well as rise.

2.4 The Client acknowledges that, unless expressly agreed otherwise, any online accounts created by or on behalf of HUGA DIGITAL MARKETING LIMITED and used in the provision of the Web Marketing Services will remain the exclusive property of HUGA DIGITAL MARKETING LIMITED, and the Client shall have no right to access such accounts or to be supplied with the login details for such accounts.

3. Pay-per-click management

3.1 This Paragraph 3 applies if the Brief specifies that HUGA DIGITAL MARKETING LIMITED will provide pay-per-click management services. If this Paragraph applies, HUGA DIGITAL MARKETING LIMITED will provide such services in accordance with the Brief.

3.2 Unless expressly agreed otherwise, the Client shall be responsible for paying all third party expenses incurred by HUGA DIGITAL MARKETING LIMITED in relation to the management of pay-per-click campaigns.

3.3 HUGA DIGITAL MARKETING LIMITED shall use all reasonable endeavours to ensure that the costs incurred by pay-per-click campaigns do not exceed any budget specified in the Brief.

3.4 HUGA DIGITAL MARKETING LIMITED shall not be responsible for any additional costs incurred through the use of PPC, nor cannot guarantee the success of a campaign.

4. Email marketing management

4.1 This Paragraph 4 applies if the Brief specifies that HUGA DIGITAL MARKETING LIMITED will provide email marketing management services.

4.2 If this Paragraph applies, HUGA DIGITAL MARKETING LIMITED will provide such services in accordance with the Brief.

4.3 The Client warrants that any email marketing list provided by the Client, or on behalf of the Client, to HUGA DIGITAL MARKETING LIMITED will have been collected and collated in accordance with all applicable laws and regulations, and that the use of any such list by HUGA DIGITAL MARKETING LIMITED for the purposes of this Schedule will not:

- (a) breach any applicable laws (including the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003);
- (b) infringe any third party's legal rights; or
- (c) give rise to any cause of action, whether against HUGA DIGITAL MARKETING LIMITED, the Client or any other person.

5. Client responsibilities

5.1 At the request of HUGA DIGITAL MARKETING LIMITED, the Client will promptly provide or make available to HUGA DIGITAL MARKETING LIMITED:

- (a) assistance in determining appropriate keywords and keyword phrases which should be targeted using the Web Marketing Services;
- (b) direct access to analytical data concerning the Promoted Website (such as data concerning referral sources, visitor activity, Promoted Website usage and conversion rates) and similar data;
- (c) an email account using the domain name of the Promoted Website; and
- (d) such articles, blog posts and other written materials as are specified in the Brief or as HUGA DIGITAL MARKETING LIMITED may reasonably request from time to time.

5.2 If the Client fails to fulfil its obligations under Paragraph 5.1, this may have a negative impact upon the results of the Web Marketing Services.

6. Results

6.1 HUGA DIGITAL MARKETING LIMITED does not warrant that any particular results will be achieved through the Web Marketing Services.

6.2 If HUGA DIGITAL MARKETING LIMITED indicates specific targets that it will attempt to meet through the provision of the Web Marketing Services, such targets are not warranted and a failure to meet such targets will not be a breach of the Agreement.

7. Intellectual Property Rights

7.1 The Client grants HUGA DIGITAL MARKETING LIMITED a non-exclusive

licence to use the Promoted Website to the extent required for HUGA DIGITAL MARKETING LIMITED to perform its obligations and exercise its rights under the Agreement.

- 7.2 If HUGA DIGITAL MARKETING LIMITED modifies the Promoted Website in the process of providing the Web Marketing Services, HUGA DIGITAL MARKETING LIMITED hereby grants to the Client a non-exclusive royalty-free licence to copy, store, use and adapt such modifications in connection with the Promoted Website.

8. Charges

- 8.1 The budget for the Web Marketing Services shall be as specified in the Brief or otherwise agreed in writing by the parties.
- 8.2 The Charges for the Web Marketing Services shall be calculated using the Standard Rates.
- 8.3 Unless HUGA DIGITAL MARKETING LIMITED agrees otherwise in writing, HUGA DIGITAL MARKETING LIMITED will issue invoices for the Web Marketing Services to the Client on a monthly basis in advance.

Schedule: Hosting and Back-up Services

This Schedule governs any hosting services and/or back-up services that HUGA DIGITAL MARKETING LIMITED supplies or agrees to supply to the Client.

1. Definitions

1.1 In this Schedule:

"Back-up Services" means any back-up services provided or to be provided by HUGA DIGITAL MARKETING LIMITED to the Client under this Schedule, as detailed in Paragraph 5;

"Dedicated Server" means a physical dedicated server or VPS made available to the Client under this Schedule;

"Hosting Resource Limits" means the limits on the use of resources through the Hosting Services applied by HUGA DIGITAL MARKETING LIMITED or its third party service provider from time to time;

"Hosting Services" means any hosting services provided or to be provided by HUGA DIGITAL MARKETING LIMITED to the Client under this Schedule, as detailed in Paragraphs 2 to 4;

"Shared Server" means a server that is shared between the Client and other customers of HUGA DIGITAL MARKETING LIMITED; and

"VPS" means a virtual private server.

2. Hosting Services

2.1 If and only if the Service Description so provides and subject to payment of the agreed Charges, PMLS will provide the Hosting Services to the Client in accordance with this Paragraph 2, and Paragraphs 3 and 4.

2.2 HUGA DIGITAL MARKETING LIMITED will make available to the Client hosting capacity on a Shared Server or Dedicated Server meeting the specification set out in the Service Description.

2.3 Unless HUGA DIGITAL MARKETING LIMITED agrees otherwise, the Client shall have no right or ability to update the materials stored using the Hosting Services. In addition, the Client will not have administration rights in relation to any server, and HUGA DIGITAL MARKETING LIMITED may:

- (a) change the configuration of a server without notifying the Client; or
- (b) refuse any request to change the configuration of a server,

in its sole discretion.

2.4 In addition to complying with the terms of the Agreement and the Acceptable Use Policy, the Client must comply and ensure compliance with the terms and policies of HUGA DIGITAL MARKETING LIMITED's third party service providers, including these documents:

http://www.xilo.net/legal/terms_of_service/
http://www.xilo.net/legal/acceptable_use_policy/

2.5 For the avoidance of doubt, Dedicated Servers made available under the Agreement and all other hardware used to provide the Dedicated Server hosting will remain the property of HUGA DIGITAL MARKETING LIMITED and/or its subcontractors at all times.

2.6 HUGA DIGITAL MARKETING LIMITED may access and audit servers made available under the Agreement at any time for the purpose of monitoring the Client's compliance with the terms of the Agreement.

2.7 Notwithstanding the provisions of Paragraph 5, HUGA DIGITAL MARKETING LIMITED may from time to time make ad hoc back-ups of Client data, but shall have no obligation to do so; however, if the Client's website uses an unsupported content management system version, then no such ad hoc back-ups shall be made.

3. Hosting Resource Limits

3.1 The Client's utilisation of resources through the Hosting Services must not exceed the Hosting Resource Limits.

3.2 The Client acknowledges that HUGA DIGITAL MARKETING LIMITED may use technical measures to prevent the Client exceeding the Hosting Resource Limits.

3.3 If the Client's utilisation of Hosting Services exceeds the Hosting Resource Limits in such a way as to have a material negative effect upon:

- (a) the operation of HUGA DIGITAL MARKETING LIMITED's computers, systems, networks and/or services; or
- (b) the ability of any other of HUGA DIGITAL MARKETING LIMITED's customers to use those computers, systems, networks and/or services,

then HUGA DIGITAL MARKETING LIMITED may suspend access to the Hosting Services or any element thereof, with or without notice to the Client, and may impose additional restrictions on the Client's use of the Hosting Services.

3.4 Without prejudice to HUGA DIGITAL MARKETING LIMITED's rights under Paragraph 3.3, if the Client's utilisation of Hosting Services exceeds or threatens to exceed the Hosting Resource Limits, the parties will endeavour to agree a variation to the Agreement. If the parties cannot agree such a variation within a reasonable period (being not more than 30 days) following notice from HUGA DIGITAL MARKETING LIMITED to the Client requesting such variation, and resource utilisation continues to exceed those limits, the Client will be deemed to be in material breach of the Agreement.

4. Availability and maintenance

4.1 Subject to Paragraph 4.2, HUGA DIGITAL MARKETING LIMITED will use reasonable endeavours to maintain 24/7 availability of the Hosting Services, but does not warrant or guarantee such availability.

4.2 Access to the Hosting Services may be interrupted during scheduled maintenance or repairs. HUGA DIGITAL MARKETING LIMITED will use reasonable endeavours to ensure that the Hosting Services are not suspended under this Paragraph during Business Hours.

4.3 HUGA DIGITAL MARKETING LIMITED reserves the right to:

- (a) install or uninstall software on any server made available to the Client under this Schedule; and
- (b) apply updates, upgrades and patches to any software installed on any server made available to the Client under this Schedule,

in each case with or without notice.

5. Back-up Services

5.1 If and only if the Service Description so provides and subject to the payment of the agreed Charges, HUGA DIGITAL MARKETING LIMITED will make back-ups of Client data in accordance with the terms of that Service Description from time to time.

5.2 At the request of the Client, HUGA DIGITAL MARKETING LIMITED shall use reasonable endeavours to restore Client data from the latest available back-up. However, the Client acknowledges that it is possible that HUGA DIGITAL MARKETING LIMITED may be unable to restore the Client data from the latest available back-up or at all, whether because that data has been corrupted or otherwise.

5.3 Subject to HUGA DIGITAL MARKETING LIMITED's compliance with Paragraph 5.2 and to Clause 9.1, HUGA DIGITAL MARKETING LIMITED shall not be liable to the Client in respect of any loss of data relating to any unsuccessful data back-up or data restoration operation.

6. Charges for Hosting Services and Back-up Services

6.1 The Client must pay to HUGA DIGITAL MARKETING LIMITED Charges in respect of the Hosting Services and/or Back-up Services, as agreed in the Brief or otherwise agreed in writing by the parties.

6.2 Notwithstanding HUGA DIGITAL MARKETING LIMITED's rights under Clause 6, the Client must pay to HUGA DIGITAL MARKETING LIMITED Charges in respect of any use of the Hosting Services exceeding the Hosting Resource Limits.

6.3 HUGA DIGITAL MARKETING LIMITED will issue invoices to the Client for:

- (a) excess usage Charges under Paragraph 6.2, at any time after the excess usage has occurred; and

- (b) other Charges for the Hosting Services and Charges in relation to the Back-up Services, on a monthly or annual basis in advance.

Schedule: Email Services

This Schedule governs any email services that HUGA DIGITAL MARKETING LIMITED supplies or agrees to supply to the Client.

1. Definitions

In this Schedule, "Email Services" means SMTP, POP, IMAP and/or webmail email services provided to the Client, including email transmission and/or storage services.

2. Email Services

2.1 Subject to the payment of any Charges agreed between the parties, HUGA DIGITAL MARKETING LIMITED will upon request provide Email Services to the Client.

2.2 The Email Services will conform to the Service Description.

2.3 Unless HUGA DIGITAL MARKETING LIMITED supplies or agrees to supply email client software to the Client, the Client shall be responsible for obtaining and licensing any email client software which may be required for the full use of the Email Services.

2.4 In addition to complying with the terms of the Agreement and the Acceptable Use Policy, the Client must comply and ensure compliance with the terms and policies of HUGA DIGITAL MARKETING LIMITED's third party service providers, including these documents:

http://www.xilo.net/legal/terms_of_service/
http://www.xilo.net/legal/acceptable_use_policy/
http://www.google.co.uk/apps/intl/en/terms/premier_terms.html

2.5 Notwithstanding any other provision of the Agreement, HUGA DIGITAL MARKETING LIMITED will not make back-ups of any email messages.

3. Resource limitations

If the Client or a mailbox exceeds the relevant storage limit notified by HUGA DIGITAL MARKETING LIMITED to the Client from time to time, HUGA DIGITAL MARKETING LIMITED may:

- (a) block the receipt of additional emails;
- (b) apply excess use Charges in respect of the additional emails; and/or
- (c) delete stored emails to bring the Client or mailbox within the storage limit.

4. Charges for Email Services

4.1 The Client must pay to HUGA DIGITAL MARKETING LIMITED the agreed Charges in respect of the Email Services (if any).

4.2 HUGA DIGITAL MARKETING LIMITED will issue invoices to the Client for such Charges on a monthly or annual basis in advance.

Schedule: Domain Name and SSL Certificate Services

This Schedule governs any domain name or SSL certificate services that HUGA DIGITAL MARKETING LIMITED supplies or agrees to supply to the Client.

1. Domain names

- 1.1 Subject to the payment of the applicable Charges in advance, HUGA DIGITAL MARKETING LIMITED will attempt to register domain names that the Client orders, but does not warrant that it will be able to do so.
- 1.2 HUGA DIGITAL MARKETING LIMITED may reject in its sole discretion any request to register a particular domain name.
- 1.3 The Client warrants and represents to HUGA DIGITAL MARKETING LIMITED that the information submitted for the purposes of a domain name registration is current, accurate and complete, that it has the legal right to apply for and use the domain name, and that its use of the domain name will not infringe any person's Intellectual Property Rights or other legal rights.
- 1.4 The Client undertakes to keep the information required for the purposes of a domain name registration up to date (and acknowledges that any changes may be subject to additional Charges).
- 1.5 The Client acknowledges that certain information submitted for the purposes of a domain name registration will be published on the internet via "WHOIS" services.
- 1.6 The Client agrees to abide by:
 - (a) the rules and policies from time to time of the registry or registration authority for the domain name; and
 - (b) the terms of the registration agreement applicable to the domain name, as amended from time to time.
- 1.7 HUGA DIGITAL MARKETING LIMITED will have no liability in respect of the suspension or loss of a domain name by the Client as a result of any domain name arbitration procedure or court proceedings.
- 1.8 HUGA DIGITAL MARKETING LIMITED will have no responsibility for the Client's use or retention of a domain name once registered, and does not warrant that it will be able to renew Client domain names. It will be the Client's responsibility to ensure that domain names are renewed and that applicable renewal charges are paid. Any notice from HUGA DIGITAL MARKETING LIMITED to the Client relating to renewal or the payment of renewal charges shall not affect this responsibility.
- 1.9 Subject to Clause 9.1, HUGA DIGITAL MARKETING LIMITED shall not be liable to the Client in respect of:
 - (a) any failure to register a domain name;
 - (b) any failure to renew a domain name loss; or
 - (c) any related liabilities, losses, costs, damages or expenses.

2. SSL certificates

- 2.1 Subject to the payment of the applicable Charges in advance, HUGA DIGITAL MARKETING LIMITED will attempt to obtain SSL certificates that the Client orders.
- 2.2 The Client warrants that the information submitted to HUGA DIGITAL MARKETING LIMITED for the purposes of an SSL certificate is current, accurate and complete.
- 2.3 The Client undertakes to keep the information required for the purposes of an SSL certificate up to date.
- 2.4 The Client agrees to the terms of the applicable SSL subscription agreement, as amended from time to time.
- 2.5 The Client acknowledges that the requirements of SSL certificate vendors relating to the continued validity of their certificates may change from time to time, and that HUGA DIGITAL MARKETING LIMITED does not systematically monitor such changes. If a vendor withdraws a certificate as a result of such a change, then HUGA DIGITAL MARKETING LIMITED shall use reasonable endeavours to have the certificate reinstated. Subject to Clause 9.1 and HUGA DIGITAL MARKETING LIMITED's compliance with the requirements of this Paragraph, HUGA DIGITAL MARKETING LIMITED shall not be liable to the Client in relation to any such certificate withdrawal.

- 2.6 The Client further acknowledges that the use of an SSL certificate does not:
 - (a) ensure that a website is secure; or
 - (b) negate the need for the Client to maintain and operate other website security technologies and processes.

3. Charges

- 3.1 The initial and recurring Charges for domain names and SSL certificates shall be as quoted by HUGA DIGITAL MARKETING LIMITED from time to time.
- 3.2 Charges for domain names and SSL certificates are non-refundable (unless HUGA DIGITAL MARKETING LIMITED fails to register the relevant domain name or obtain the relevant certificate).

Schedule: Creative Services

This Schedule governs any creative services that HUGA DIGITAL MARKETING LIMITED supplies or agrees to supply to the Client.

1. Definitions

In this Schedule:

"**Client Works**" means all works and materials provided by or on behalf of the Client to HUGA DIGITAL MARKETING LIMITED for incorporation into the Creative Deliverables;

"**Creative Deliverables**" means graphical, video, audio and/or audio-visual works to be supplied by HUGA DIGITAL MARKETING LIMITED to the Client under this Schedule, as specified in the applicable Brief;

"**Creative Services**" means the creation and refinement of the Creative Deliverables in accordance with the provisions of this Schedule and the applicable Brief; and

"**Third Party Works**" means the works and materials comprised in the Creative Deliverables, the Intellectual Property Rights in which are owned in whole or part by a third party (excluding the Client Works).

2. Creative Services

2.1 HUGA DIGITAL MARKETING LIMITED will supply the Creative Services to the Client.

2.2 The Client must provide feedback on preparatory design work promptly, and in any event in accordance with any timetable agreed between the parties.

3. Creative Deliverables

HUGA DIGITAL MARKETING LIMITED will deliver the Creative Deliverables to the Client in accordance with the delivery schedule agreed between the parties (if any), providing that:

- (a) that delivery schedule shall not be of the essence of the Agreement; and
- (b) the Client acknowledges that delays in the fulfilment of the Client's obligations under the Agreement may lead to delays in the delivery of the Creative Deliverables.

4. Intellectual Property Rights

4.1 If the parties have agreed in writing that the Intellectual Property Rights in the Creative Deliverables are to be assigned to the Client:

- (a) from the date of delivery of the Creative Deliverables by the Client, HUGA DIGITAL MARKETING LIMITED hereby assigns to the Client all its Intellectual Property Rights in the Creative Deliverables; and
- (b) these rights are assigned for the whole term of such rights, together with all reversions, revivals, extensions and renewals, and this assignment includes the right to bring proceedings for past infringement of the assigned Intellectual Property Rights.

4.2 Unless Paragraph 4.1 applies, all Intellectual Property Rights in the Creative Deliverables will, as between the parties, be the property of HUGA DIGITAL MARKETING LIMITED and, from the date of delivery of the Creative Deliverables to the Client, HUGA DIGITAL MARKETING LIMITED grants to the Client a non-exclusive worldwide licence to store, copy and adapt the Creative Deliverables, providing that:

- (a) unless HUGA DIGITAL MARKETING LIMITED agrees otherwise in writing, the Client must not sell, resell, rent, lease, supply, distribute or redistribute the Creative Deliverables; and
- (b) the Client may only sub-license the rights licensed under this Paragraph for the limited purposes, and subject to the express restrictions, specified in this Paragraph 4.2.

4.3 The Client acknowledges that the Creative Deliverables may include Third Party Works. The Third Party Works will, at the option of HUGA DIGITAL MARKETING LIMITED, be:

- (a) supplied in accordance with the relevant licensor's standard terms; or

- (b) supplied on licence terms notified by HUGA DIGITAL MARKETING LIMITED to the Client or incorporated into the Third Party Works.

4.4 Notwithstanding any other provision of the Agreement, the assignments and licences granted by HUGA DIGITAL MARKETING LIMITED under this Schedule are subject to the payment by the Client of the Charges for the Creative Services in full and on time. In the event that the Client owes any amount to HUGA DIGITAL MARKETING LIMITED under this Schedule and fails to pay that amount to HUGA DIGITAL MARKETING LIMITED within 30 days of receiving a notice:

- (a) requiring it to do so; and
- (b) specifying that the assignments will revert and the licences will terminate if the amount remains unpaid,

then HUGA DIGITAL MARKETING LIMITED may immediately revert any or all assignments and terminate any or all licences granted by HUGA DIGITAL MARKETING LIMITED under this Schedule by giving written notice of reversion and/or termination to the Client.

4.5 Subject to Paragraph 4.4, upon and following the termination of the Agreement, any licence granted by HUGA DIGITAL MARKETING LIMITED to the Client will continue notwithstanding termination, and this Paragraph 4 will continue to apply.

5. Moral rights waiver

HUGA DIGITAL MARKETING LIMITED will use reasonable endeavours to seek to ensure that its employees and subcontractors waive any moral rights they may have in the Creative Deliverables arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights anywhere in the world.

6. Charges

The Charges in respect of Creative Services and Creative Deliverables, and dates upon or after which HUGA DIGITAL MARKETING LIMITED may issue invoices for those Charges, are as set out in the Brief.