Digital Services Agreement

Dated: XXth XXX 2018

(1) **Redweb Ltd**

(2) **Client**

Draft number	:	13
Last revised	:	20/10/17

CONFIDENTIAL

THIS AGREEMENT is made on 2018

BETWEEN:-

(1) **Redweb** : **REDWEB LIMITED** (registered number 3420895) whose registered office is at 35 Holdenhurst Rd, Bournemouth, BH8 8EJ.

(2) **Customer** :

AGREED TERMS

1. INTERPRETATION

1.1 In this Agreement the following words shall have the following meanings:

Agreement		means this agreement and the schedules;
Bespoke Material	:	new graphics, icons, text, branding, and other graphical and audio material created by Redweb under this Agreement and code specific to work undertaken pursuant to this Agreement;
Charges	:	the price to be paid for the Services;
Customer Material	:	all material provided by the Customer for Redweb to use in the purposes of this agreement;
Expenses	:	means all travel, accommodation and sustenance expenses reasonably and properly incurred in the performance of this Agreement
Generic Software	:	the software, applications, navigation models, information architecture, database structures, content management systems, third party applications, software engineering,

functionality and other generic components used in the website design;

Milestone : A phase completion or tranche of work that can demonstrate progression

Normal Working Hours : means 0900 hours to 1700 hours on a Business Day in London, United Kingdom;

Services : the services described in Schedule 1 (including any part or parts of them).;

Specification : a specification for the Services;

Writing : means a notice or other communication sent by post, facsimile or e-mail (both body and attached documents).

1.2. In this Agreement:

1.2.1. any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time;

1.2.2. references to any gender includes any other gender and the singular includes the plural and *vice versa*;

1.2.3. the headings are for ease of reference only and shall not affect the construction or interpretation;

1.2.4. reference to words importing the singular only also includes the plural and *vice versa*;

1.2.5. references to this agreement include references to this Agreement as validly varied from time to time;

1.2.6. references to recitals, Clauses, sub-clauses, Schedules and Annexes are references to the recitals, clauses and sub-clauses of, and schedules and annexes to, this Agreement; and

1.2.7. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".

1.2.8. In the event of any inconsistency or conflict between the terms and conditions of this section of the Agreement and any other document stated to form part of this Agreement then, if the inconsistency or conflict concerns either of the parties' rights and obligations under the terms of this Agreement then, except where expressly stated to the contrary, the provisions of this Agreement shall prevail over the provisions of any other document referred to in it (including the Schedules to this Agreement).

2. APPOINTMENT

2.1 Redweb shall deliver, and the Customer shall accept, the Services in accordance with and subject to the terms of this Agreement.

2.2 The Services are personal to the Customer and all written reports or other communications shall only be for the benefit of the Customer and not passed to any third party.

2.3 If the Customer requires further work or wishes to change work already commissioned from Redweb it shall advise Redweb of its requirements and Redweb shall advise the Customer of the cost to scope the change (if applicable) and subject to the Customer agreeing that cost Redweb shall scope the change. Redweb shall advise the customer of the cost and timescale and if necessary produce supplementary Schedules 1 to 3. If the Customer wishes to proceed it shall provide confirmation in writing.

2.4 If the Customer shall request any changes to the Specification (if one has been produced) after sign off, Redweb shall advise the Customer of its cost to scope the change, and subject to the Customer agreeing that cost, Redweb shall scope the change and advise the Customer of the effect on cost and timescale and if necessary produce supplementary Schedules 1 to 3. If the Customer wishes to proceed it shall provide confirmation in writing.

3. PROJECT MANAGEMENT

3.1 Each party shall appoint a representative and inform the other of his identity and contact details. The Customer's representative shall have full authority from the Customer to give instructions to Redweb.

3.2 Should the Customer's representative not have full authority then this should be clearly communicated to Redweb as the Customer may be liable to additional cost when instructions or decisions made by said representative differs to those received by other representatives of the Customer.

3.3 Redweb shall, subject to Clause 3.3, perform its obligations under this Agreement in accordance with Schedule 2 and work on each phase set out in the sequence/s set out therein.

3.4 No revision may be made to Schedule 2 or the central live Project Plan without the express written consent of both parties (and for the avoidance of doubt such written consent may include consent given by electronic mail), save only for revisions made by Redweb which:

(a) enable Redweb to perform its obligations under this Agreement more economically;

(b) do not delay any of the Milestones;

(c) do not require an increase to the Charges; and

(d) do not cause the Customer to incur additional costs or expenses (including such costs and expenses as the Customer may be liable to pay its sub-contractors as a result of such a revision),

and for revisions made by the Customer which:

(e) enable the Customer to perform its obligations under this Agreement more economically and more efficiently;

(f) do not delay any of the Milestones; and

(g) do not cause the Redweb to incur additional costs or expenses.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

4.1.1. co-operate with Redweb and act reasonably in all matters relating to the Services;

4.1.2. provide Redweb with such information and documentation as Redweb may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

4.1.3. obtain and maintain all necessary licences, permissions and consents which may be required for the performance of the Services (and the parties acknowledge that Redweb will not charge for the use of any software owned or developed by Redweb, but that the Customer is responsible for any third party licence fees not listed in Schedule 1 as being Redweb's responsibility

4.1.4. provide Redweb with Customer Materials promptly and fit for purpose;

4.1.5. provide Redweb, its employees, agents and subcontractors with access to the Customer's premises, office accommodation and other facilities as reasonably required by Redweb;

4.1.6. keep and maintain all Redweb Materials at the Customer's premises in safe custody, at its own risk and not dispose of or use any Redweb Materials other than in accordance with Redweb's written instructions or authorisation; and

4.1.7. complete their own dependent activities such as user acceptance testing and content uploading/addition in a thorough, timely and controlled fashion.

5. PERFORMANCE OF THE SERVICES

5.1 Redweb shall perform the Services in accordance with Schedule 2 or any other shared format of communication between Redweb and the Customer that sets out the services to be performed and the charges to be paid.

5.2 Redweb shall not be liable for the consequences of any delay in performing the Services unless otherwise agreed.

5.3 Redweb is under no obligation to rectify errors in Customer Material including and not limited to spelling or grammatical mistakes in copy.

5.4 Redweb may make any changes to the Services which are necessary to comply with applicable law or safety requirements PROVIDED THAT:

(a) Redweb notifies the Customer as early as possible of any such changes that it proposes to make;

(b) all costs associated with such changes shall be borne by Redweb; and

(c) the Customer may terminate this Agreement by notice in writing if, in its reasonable opinion, the effect of such changes would be materially to affect the benefit of this Agreement to the Customer.

5.5 Unless otherwise specified in this Agreement:

5.5.1. time for performance of this Agreement shall not be of the essence, but Redweb agrees to use reasonable endeavours to meet any target dates or timescales agreed between the parties and documented in Schedule 2; and

5.5.2. the Services shall be performed during Normal Working Hours.

5.6 Redweb shall:

5.6.1. co-operate with the Customer and act reasonably in all matters relating to the Services;

5.6.2. provide the Customer with such information and documentation as the Customer may reasonably require in order to receive the Services, and ensure that such information is accurate in all material respects;

5.6.3. obtain and maintain all necessary licences, permissions and consents which may be required for the performance of the Services;

5.6.4. keep and maintain all Customer Materials that it receives in the course of performing the Services in safe custody, at its own risk, and not dispose of or use any Customer Materials other than in

accordance with the Customer's written instructions or authorisation.

5.7 To the extent that the Customers' performance of this Agreement is prevented or delayed by any act or omission by Redweb or failure by Redweb to perform any relevant obligations that have been agreed between the parties *("Redweb Default"):*

5.7.1. the Customer shall, without limiting its other rights or remedies, have the right to withhold payment for any Services until Redweb remedies the Redweb Default, provided that the Customer acts reasonably in exercising this right and in determining the amount of the payment that it wishes to withhold;

5.7.2. the Customer shall neither be in breach of this Agreement nor liable for the consequences; and

5.7.3. Redweb shall reimburse the Customer on written demand for any 3rd party cost incurred by the Customer arising directly from the Redweb Default.

6. CHARGES

6.1 The Charges payable under this Agreement are set out in Schedule 3, and will be invoiced

a) for the Services/labour completed at month end or:

b) in accordance with the Schedule 3/Payment plan upon successful completion of the relevant Milestones.

6.2 The Customer agrees to the principal that no Milestone as listed in Schedule 3 will constitute to over 15% of the total project price.

6.3 If at the time of this agreement being finalised, insufficient detail is known to define specifically the exact breakdown of tasks then the Customer agrees that Schedule 3 will include provisional milestones. The schedule will show markers outlining at a minimum 7 milestone indicators.

6.4 The Charges shall not include the cost of hosting websites in a live or test environment, e-mail, domain name registration or renewal, secure certificates, third party components, search engine registration, photography, models, props, manuals , training or any user experience research unless otherwise expressly agreed and stated in this Agreement.

6.5 The Charges are exclusive of any Expenses, value added tax, or import or export duties, which (subject to receiving an invoice therefor) the Customer shall pay in addition to the Charges. Any singular Expense in excess of £200 (including VAT) shall not be payable by the Customer unless specifically agreed to in advance, in writing.

6.6 Where the Customer requires Redweb to carry out any preliminary work or work additional to that provided for in this Agreement, Redweb shall be entitled to charge for such additional work at such sum as the parties shall agree, or, in default of agreement, at Redweb's standard daily rates. In the event that delivery of the Services is delayed or disrupted by factors beyond the control of Redweb, Redweb shall be entitled to a fair and reasonable adjustment to its fee.

7. PAYMENT

7.1 The Customer shall pay the price for the Services upon receipt of the corresponding invoice within 30 days.

7.2 The Customer shall make all payments due without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

7.3 If payment is not made by the due date, then the Customer shall be liable to pay interest to Redweb on such sum due from the time payment was due at a monthly rate of interest of 4% above the base lending rate of NatWest Bank plc accruing on a daily basis until payment in full is received by Redweb (whether before or after any judgment).

7.4 The Customer shall not withhold payment of any validly-rendered invoice provided by Redweb in accordance with this Agreement, unless the Customer has a *bona fide* dispute regarding the invoice or part thereof, and in that case the Customer shall make payment within the required period of the undisputed portion of such disputed invoice, and the parties will meet as soon as practicable to discuss in good faith the resolution of the dispute over the unpaid amount.

8. SCOPING AND TESTING

8.1 This clause shall only be applicable for larger pieces of work. Redweb shall notify the Customer if it does not apply.

8.2 Redweb shall initially undertake a requirements gathering exercise in consultation with the Customer. After presentation of the same to the Customer and making any required amendments, the Customer shall sign it off as agreed.

8.3 After sign off pursuant to clause 8.2, Redweb shall develop a specification in consultation with the Customer. After presentation of the same to the Customer and making any required amendments, the Customer shall sign it off as agreed.

8.4 Redweb shall, prior to any delivery of the Deliverables under this Agreement, carry out all reasonable internal quality assurance tests at Redweb's premises in accordance with best practice and against any specifications or documentation created in the process to define the Deliverables. The purpose of these QA tests will be to fully ascertain that the Asset/Website(s)

(or relevant part(s) of the Asset/Website(s)) will be capable of providing the functions and facilities requested by the Customer and otherwise comply with the Schedule and ready for formal acceptance testing.

8.5 Where material defects are found then Redweb will be granted reasonable time to rectify such items based on an evaluation of the defect list and a prioritisation of their critical nature.

8.6 Redweb will only be liable to rectify faults detectable at the time of testing and additional Charges may apply for the resolution of defects identified after Redweb's QA tests are complete and due to: a) Defects arising from process/procedures not identified in the test scripts b) Defects arising where interdependent Customer's tasks where not completed in time for testing

8.7 Immediately after delivery and installation of the Deliverables, The Customer shall deploy their own Acceptance Tests to establish whether the Acceptance Test Criteria have been met in respect of those Deliverables and the Customer shall notify Redweb in Writing of its acceptance when the Website(s) (and/or the relevant Deliverables) have passed the Acceptance Tests ("First Acceptance"). If they have not then the Customer will allow Redweb reasonable time to rectify the defects documented by the Customer.

8.8 For the avoidance of doubt all testing and acceptance will be against the defined specification or last communication to how a function will comply. Any deviation to an original requirement made during the design process will be treated as absolute. For any defects arising from ambiguity of requirements then the benefit of doubt will remain with Redweb.

8.9 The Customer has an obligation to satisfy themselves how elements of functionality will function throughout the design process and should not consider the user acceptance testing phase as a period to re-scope requirements in the context of a material defect.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 With effect from receipt by Redweb of all monies payable to Redweb by the Customer and not before, Redweb assigns all intellectual property rights in the Bespoke Material to the Customer.

9.2 All intellectual property rights in the Customer Material will belong to and remain vested in the Customer subject to a worldwide, royalty-free, non-exclusive licence for Redweb to use it to the extent necessary to perform the Services.

9.3 The Customer warrants that it owns the intellectual property rights in the Customer Material and that it has the right to grant the licence in clause 9.2.

9.4 The intellectual property rights in everything except for the Bespoke Material and the Customer Material will remain vested in Redweb.

9.5 Redweb grants to the Customer a worldwide, royalty-free, non-exclusive, non-transferable licence for the Customer to use the Generic Software only for the

purpose of operating, maintaining and developing the website created by Redweb for the Customer.

9.6 The licence in clause 9.5 above shall terminate if:

9.6.1. any term of these terms of this Agreement are breached by the Customer; or

9.6.2. the Customer enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or resolution is passed or petition presented for its winding up or if a petition is presented to court or an order made for an administration order in respect of the Customer, or if a receiver and/or manager or administrative receiver is appointed in respect of the whole or any part of the Customer's undertaking or assets.

9.7 The Customer shall not remove any copyright or similar notices placed by Redweb on its intellectual property.

10. THIRD PARTY RIGHTS

10.1 Unless expressly agreed otherwise in this Agreement, the Customer shall be responsible for obtaining all licences and permissions in respect of third party copyright works, trade marks, designs or other intellectual property supplied by the Customer to Redweb or directly placed by the Customer through a content management system or similar application onto servers and/or other IT equipment under the control of Redweb or their suppliers. The Customer shall comply with the terms of any third party software licences provided as part of the Services.

10.2 Unless expressly agreed otherwise in this Agreement, Redweb shall be responsible for obtaining clearances in respect of third party copyright works, trade marks, designs or other intellectual property supplied by Redweb to the Customer under the Contract.

10.3 Each party ("the Indemnitor") shall indemnify the other ("the Indemnitee") and keep it indemnified against all costs and expenses incurred in dealing with, defending and/or settling any claims, and all damages and costs awarded by any court of competent jurisdiction, resulting from or arising out of the Indemnitor's failure to comply with clauses 10.1 and 10.2 above subject to the Indemnitee:

10.3.1. promptly notifying the Indemnitor of any such claim;

10.3.2. taking such action at the Indemnitor's cost as the Indemnitor shall reasonably require;

10.3.3. not admitting, settling or compromising any claim without the prior written consent of the Indemnitor (such consent not to be unreasonably withheld or delayed)

10.4 The Customer is responsible for any costs or time incurred by Redweb in relation to:

10.4.1. the transfer and clarification of ownership and assignment of intellectual property; and

10.4.2. the preparation and negotiation of this Agreement.

11. WARRANTY

11.1 Redweb warrants the performance of the Bespoke Material against material defects for 1 month following the date of its delivery to the Customer or if agreed the “Go-live” date for the application/website.

Warranty is subject to the Customer signing and returning to Redweb, Redweb’s standard support agreement prior to the commencement of the warranty. The free service provision will be by default our standard “in-hours” application support services. If the Customer does not sign and return such agreement, the Customer will not be eligible for support unless at the discretion of Redweb.

11.2 Redweb does not warrant the performance of its original software, unless formally agreed in writing to the contrary, where the Customer has/had access to the server and hence has been able to alter or attempt to alter its coding.

11.3 For the avoidance of doubt Redweb does not warrant that any software will be error free or that its use will be uninterrupted.

11.4 Additional work/additions on Redweb’s original software will be considered a modification unless stated prior to order and will not warrant an extension to the original software’s support period.

11.5 Redweb undertakes to use reasonable skill and care in performing the Services.

11.6 Apart from clauses 11.1 and 11.5, Redweb makes no representations and gives no warranties of any kind and all such warranties or representations are excluded to the fullest extent permissible by law.

12. INDEMNITY

12.1 The Customer shall ensure that nothing is transmitted by or on behalf of the Customer through services provided by Redweb or its agents or sub-contractors which infringes any law or any third party rights (including, without limitation, intellectual property rights) or which is obscene, offensive, liable to incite racial hatred or terrorism, menacing, blasphemous, defamatory or in any way unlawful.

12.2 The Customer shall indemnify Redweb in full and on demand against any claim, cost, expense, loss or liability suffered or incurred by Redweb arising out of or in connection with anything available on or from or placed on or transmitted from the Customer's website or the way in which the Customer uses or allows others to use its website. Redweb shall be entitled without notice to disable the Customer's website or any part of it immediately or take such other action as it may in its discretion consider appropriate to protect Redweb from any liability or potential liability including, without limitation, terminating this and any other agreement Redweb has with the Customer.

13. LIABILITY

13.1 Nothing in this Agreement excludes or limits the liability of either party for:

13.1.1. death or personal injury caused by its negligence;

13.1.2. fraud or fraudulent misrepresentation; or

13.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

13.2 Subject to clause 13.3, Redweb shall not be liable to the Customer [and/or any Affiliate of the Customer], whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement (including without limitation, any Schedule) for:

13.2.1. loss of profits;

13.2.2. loss of sales or business;

13.2.3. loss of agreements or contracts;

13.2.4. loss of anticipated savings;

13.2.5. loss of or damage to goodwill;

13.2.6. loss of use or corruption of software, data or information;

13.2.7. any indirect or consequential loss.

13.3 Subject to clause 13.1 and clause 13.2 Redweb's total liability to The Customer [and/or any Affiliate of The Customer], whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement (including without limitation, any Statement of Work) shall be limited to [the Charges paid by the Customer under this Agreement in the period of 12 months ending on the date on which the circumstances giving rise to the relevant claim occur OR maximum £2,000,000.

13.4 This clause 13 shall survive termination of this Agreement.

14. CANCELLATION/POSTPONEMENT/DELAY

14.1 Once work has commenced, all parties are expected to work within the agreed timescales as set out in the schedule of works. If at any time during the schedule of works, the client wishes to cancel or delay any work, they should provide notice in writing.

14.2 Any cancellation or postponement of this Agreement by the Customer shall entitle Redweb to recover all costs incurred directly by 3rd parties which have been purchased or ordered in support of the Deliverables.

14.3 Where work is cancelled or postponed for any reason including delays caused by 3rd party organisations, the customer will pay a penalty to cover allocation of resource by Redweb to complete the work.

Notice of cancellation or postponement	**Chargeable penalty**
Immediate	100% of the value of remaining work for 1 week then 50% up to 4 weeks after cancellation/delay date.
Up to 1 week	50% of the value of remaining work up to 3 weeks after cancellation/delay date.
Up to 2 weeks	50% of the value of remaining work up to 2 weeks after cancellation/delay date.
Up to 3 weeks	50% of the value of remaining work up to 1 week after cancellation/delay date.

14.4 The client shall pay for all work undertaken by Redweb up to the cancellation date on or before the times specified in Schedule 3.

14.5 When circumstances result in a milestone(s) completion as listed in Schedule 3 being delayed and the delay is attributed either directly or indirectly to actions/omissions of the Customer (or any 3rd party organisations not directly contracted by Redweb); then Redweb will have the right to invoice the client up to 85% of the payment in recognition of the work completed prior to the delay.

14.6 Should the Customer want to delay work, Redweb may review and increase the Charges.

15. TERMINATION

15.1 Either party ("the terminating party") shall have the right at any time by giving notice in writing to the other party to terminate this Agreement immediately if:

15.1.1. the other party commits a material breach any of the terms of this Agreement, and has failed to remedy it within 30 days of receipt of a notice from the terminating party requiring the other party to do so;

15.1.2. any distress, execution or other process is levied upon any of the assets of the other party; or

15.1.3. the other party enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed or a petition presented for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court or an order made from administration order in respect of that party, or if a receiver and/or manager or administrative receiver is appointed in respect of the whole or any part of the other party's undertaking or assets.

15.2 The termination of the Contract, however arising, will be without prejudice to the rights and duties of the parties accrued prior to termination.

16. ASSIGNMENT AND SUB-CONTRACTING

16.1 The Customer shall not be entitled to assign its rights or any part of them without the prior written consent of Redweb.

16.2 Redweb may assign or sub-contract its rights or any part of them to any person, firm or company.

17. CONFIDENTIALITY

17.1 Each party agrees and undertakes that it will keep confidential, and will not use for its own purposes nor without the prior written consent of the other, disclose to any third party, any information about the other or its business (including trade secrets and information of commercial value) which may become known to such party from the other party unless such information is public knowledge or already known to such party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Agreement or comes lawfully into the possession of such party from a third party.

17.2 The provisions of this clause shall remain in force and effect notwithstanding any termination of this Agreement.

17.3 All Redweb documentation supplied to the Customer remains “Commercial in confidence” and should not be copied or distributed for reasons beyond the project.

18. NON-SOLICITATION

18.1 Until 12 months after delivery of the Services pursuant to this Agreement the Customer shall not directly or indirectly solicit or offer employment or a consultancy to any employee of Redweb of which the Customer has come into contact with in connection with the performance of the Services or dealings with the agency.

19. PUBLICITY AND ACKNOWLEDGEMENTS

19.1 Redweb shall be entitled to publicise its role in performing the Services and shall be entitled to use the Bespoke Material for that purpose.

19.2 For the avoidance of doubt, Redweb’s statutory right to be identified as the author of any copyrightable works created in performing this Agreement under sections 77-79 of the Copyright, Designs and Patents Act 1988 or any amendment or re-enactment thereof is asserted.

20. FORCE MAJEURE

20.1 Redweb shall not be liable to the Customer if it is prevented from or delayed in the performance of the Services due to circumstances beyond the reasonable control of Redweb including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, riot, civic commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials or disruption to power supplies.

21. GENERAL

21.1 If any provision (or part thereof) of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly invalid or unenforceable it shall, to the extent of such invalidity or unenforceability, be deemed severable and the remaining provisions of this Agreement and the remainder of such provision shall continue in full force and effect.

21.2 Failure or delay by either party in enforcing or partially enforcing any provision of this Agreement will not be construed as a waiver of any of that party’s rights under this Agreement.

21.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply.

21.4 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement,

understanding or agreement between them relating to the subject matter they cover. Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

21.5 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). This provision is for the benefit of Redweb which may commence proceedings in any jurisdiction.

22. COMMUNICATIONS

22.1 Any notice under this Agreement must be in writing and delivered by hand, sent by pre-paid first class post, or sent by e-mail:

22.1.1. in case of communications to Redweb to the address given to the Customer and as may be changed by Redweb from time to time; or

22.1.2. in the case of communications to the Customer to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Agreement or such other address as shall be notified to Redweb by the Customer from time to time.

22.2 Communications shall be deemed to have been received:

22.2.1. if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

22.2.2. if delivered by hand, on the day of delivery;

22.2.3. if sent by e-mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

22.3 Communications addressed to Redweb shall be marked for the attention of the Project or Account Manager or a Redweb Director.

22.4 Notices must be sent to the addresses as set out on page 1 of this Agreement.

23. TUPE

23.1 For the purposes of this Clause 23:-

"Employee" means any individual employed at any time by Redweb or any subcontractor of Redweb"

"Employment Liabilities" means:-

any liability or claim with respect to any Employee or any collective agreement relating to any Employees which transfers to a New Employer under TUPE (each as defined below), including any liability for any act or omission which is deemed to be the act or omission of the New Employer under TUPE;

the cost of performing or any liability resulting from the breach of any contract of employment or other contract, duty or obligation which transfers to a New Employer under TUPE, including any wages, benefits, PAYE, national insurance contributions, or other payments due or becoming due to or in respect of an Employee whether before or after the relevant Transfer Event (as defined below);

any liability to HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions, in relation to any Employees;

any liability or cost incurred by any New Employer in having to conduct any redundancy process or make any individual (including any Employee or any other employee) redundant as a result of any transfer of the contract of employment of any Employee to it, including redundancy and compromise payments payable or paid;

any liability or cost incurred by a New Employer for or arising as a result of the termination (including wrongful termination) of the contract of employment of, or the dismissal (including unfair dismissal) of, any Employee by the New Employer for any reason, including redundancy payments, and unfair, wrongful, or constructive dismissal compensation, payments in lieu of notice, and compromise payments, provided such termination or dismissal takes place within 6 months of the relevant Transfer Event; and

all administrative, legal and other costs and expenses incurred by a New Employer in connection with the above, including in respect of the investigation, defence, or settlement of any claims or liability.

"New Employer" means the Customer, any Affiliate of the Customer, or any Replacement Supplier;

"Replacement Supplier" means any third party whom the Customer or any Affiliate of the Customer may at any time engage (directly or indirectly) to provide any services in replacement for the Services;

"Transfer Event" means any event (including any termination of this Agreement) which does or may have the result of transferring the contracts of employment or claim of any Employee to a New Employer;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any similar or replacement legislation under which Employees contracts of employment or claims may transfer to a New Employer;

23.2 The parties acknowledge and agree that it is not their intention that any Employees (or their contracts of employment, rights, or claims or any liability to them) should transfer as a result of any termination or variation of this Agreement, and Redweb warrants that this will not be the case, and that it will organise all individuals involved in the provision of the Services with a view to minimizing the chances of this occurring.

23.3 Redweb hereby indemnifies and agrees to hold the Customer and any New Employer harmless (as a third party right) from and against any and all Employment Liabilities. Redweb hereby indemnifies and agrees to hold the Customer harmless from and against any liability which the Customer may elect to assume to any New Employer with respect to any Employment Liabilities.

23.4 Nothing in this Agreement shall limit or exclude Redweb's liability under or for breach of this Clause.

24. FORCE MAJEURE

24.1 If either party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event, that party's obligations shall be suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed.

25. CHANGES

25.1 If at any time and following agreement of the Schedules, the Customer wishes to change all or any part of the Services, the Customer shall submit a request for change in accordance with a standard Change Control Procedure and the parties shall follow the Change Control Procedure in evaluating, pricing, agreeing and documenting the required change.

26. PUBLICITY AND ACKNOWLEDGEMENTS

26.1 Redweb shall be entitled to publicise its role in performing the services once publically available. Redweb shall not use or circulate any promotional or marketing material in connection with the Website(s) without the Customer's prior approval in Writing.

26.2 Redweb shall not make any announcement or issue any press release concerning its provision of the Website(s) without the Customer's prior approval in Writing.

26.3 For the avoidance of doubt, Redweb's statutory right to be identified as the author of any copyrightable works created in performing this Agreement under sections 77 – 79 of the Copyright, Designs and Patents Act 1988 or any amendment or re-enactment thereof is asserted.

27. GENERAL

27.1 Neither party may transfer its rights under this Agreement, or subcontract or delegate its obligations to any third party, without the prior written consent of the other party (not to be unreasonably refused or delayed) PROVIDED that the Customer may transfer its rights without such consent in the case of a *bona fide* sale or reorganisation of the Customer's business.

27.2 Any variation to this Agreement, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by both parties in accordance with the Change Control Procedure.

27.3 If a court or any other competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity, legality and enforceability of the other provisions of this Agreement shall not be affected.

27.4 If any invalid, illegal or unenforceable provision of this Agreement would be valid, legal and enforceable if some part of it were deleted or amended, the provision shall apply with the minimum modification necessary to make it so.

27.5 A person who is not a party to this Agreement shall not have any rights under or in connection with it.

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

27.7 A waiver of any right under this Agreement is only effective if it is in writing, and it shall not be deemed to be a waiver of any subsequent breach or default.

27.8 This Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it, and supersedes any previous agreement between the parties relating to such matters.

27.9 This Agreement and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.

27.10 Each party irrevocably agrees to submit to the non-exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with this Agreement.

Schedule 1
Services

DESCRIPTION OF SERVICES

Schedule 2
Project Plan - Delivery Date(s)

Provisional Project Plan to be inserted – Ensure provisional milestones are shown.

Schedule 3
Price and Time of Payment

Note no payment milestone should be over 15% of overall

Any notes or exceptions to this billing plan.

Additional items such as CMS software, hosting or support etc.

RATE CARD

RATE CARD TO BE INCLUDED HERE

SIGNED by)

for and on behalf of)

REDWEB LIMITED)

Must be signed by Redweb Director

SIGNED by)

for and on behalf of)

[ ])