

ALBERON LIMITED – TERMS OF SERVICE

These Terms of Service, together with the terms of any SOW (as defined below) set out the terms on which we will provide services to the person to whom the SOW is addressed (“you”). Please ensure that you have read and understand these Terms of Service. Certain provisions of these Terms of Service will only apply to you in relation to certain kinds of services.

1. Interpretation

1.1 In these Terms of Service, the following definitions apply:

Acceptance Test: the testing of the Deliverables prior to acceptance by you;

Agreement: the agreement between us and you for the supply of Services, comprising any SOW and these Terms of Service;

Commencement Date: the date on which you indicate to us your acceptance of the SOW;

Customer Data: all data, information, and other materials in any form (including derivatives) relating to you (and/or your customers) and which may be accessed, generated, collected, stored or transmitted by us (or any of our contractors) in the course of the performance of the Services;

Customer Environment: means any networks and network devices, servers, server hardware, storage systems, computer systems, file systems, print systems, applications, software or software components, database management systems and related systems, used by you or your Group from time to time;

Customer-Procured Third-Party Software: any Third-Party Software identified as such in a SOW;

Customer Service Provider: a third-party service provider engaged by you in services that interface or interoperate with the Services, including those set out in a SOW;

Customer Software: all computer programs and applications and materials owned, licensed or used by you (excluding the Software and Third-Party Software);

Damages: all damages, losses, liabilities, fines, costs and expenses including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

Data Protection Legislation: the Data Protection Act 2018 and any implementing laws, regulations and secondary legislation, or successor legislation, as amended or updated from time to time.

Deliverables: those specific products or outputs of the Services which we agree in the SOW are to be provided to you by us, which may include (as applicable and without limitation) documentation, software (including modifications to our proprietary software or to Third Party Software) or designs;

Fees: the fees payable by you for the supply of the Services;

Force Majeure Event: an event outside our reasonable control, including strikes, lock-outs or other industrial disputes, failure of a utility service, communications network or transport network, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, adverse weather conditions, default of suppliers or subcontractors, or, in connection with a Site, any DOS or DDOS attacks or other third-party attacks on that Site;

Project Milestone: a date by which an aspect of the provision of the Services is to be completed, as set out in a SOW;

Services: the services of IT advice and/or solutions, services and/or support to your business operations to be provided by us as set out in the SOW;

Service Description: our standard service description documents (for example in relation to our hosting or support offerings), as updated or amended by us from time to time;

Site: means any website, database or application which we host for you as part of the Services;

Specifications: any requirements specification or technical specification for any Deliverables which is: i) incorporated in or referred to in the Proposal; or ii) developed and agreed between the parties as part of the Services;

Security Update: any updates (including for the purposes of security) which are made generally available by the relevant third-party proprietors in relation to any content management systems, modules, plugins, themes or extension on which the Site relies;

SOW: Statement of Work for Services and/or Deliverables substantially in the form set out in Schedule 1 (Pro-Forma Statement of Work) duly completed and executed between us and you or covered in our invoice to you;

SOW Effective Date: the effective date of execution of a SOW and/or invoice (as the case may be) if earlier, the date of the most recent invoice issued by us to you;

Term: two years from the last SOW Effective Date;

Third Party Software: software which is proprietary to any third party (including as applicable any free and open-source software);

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Virus: anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices; and

We or us: Alberon Limited, a company registered in England and Wales under company number 05765707 with its registered office at Smith House Dunstan Road, Headington, Oxford, England, OX3 9BZ.

- 1.2 In these Terms of Service:
- 1.2.1 **days** are calendar days unless expressly stated to be working days;
- 1.2.2 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.3 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words to which it relates; and
- 1.2.4 a reference to **writing** or **written** includes emails.
- 1.3 In the event of any conflict or inconsistency between the provisions of these Terms of Service and the provisions of any SOW the provisions of the SOW shall prevail.
- 1.4 These Terms apply to the provision of Services to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2. Appointment and Supply of Services**
- 2.1 By accepting our SOW, you are entering into the Agreement. These Terms of Service apply to the Agreement to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The SOW will set out the details of the Services to be provided by us, including descriptions of those Services, times and places for delivery, fees, expenses and our invoicing schedule.
- 2.3 We and you shall agree a SOW in respect of any Services required by you under these Terms.
- 2.4 Each SOW shall form part of and be interpreted in accordance with the provisions of this Agreement.
- 2.5 We shall use reasonable endeavours to manage and complete the Services and deliver the Deliverables in accordance in all material respects with the SOW and with any applicable Specifications or Service Description in all material respects.
- 2.6 You acknowledge that if you have approved any Deliverable, we may rely on its suitability for the performance of the remainder of the Services and shall have no liability to you in relation to the suitability of any subsequent Deliverables based on the approved item. For example, if you approve a wireframe and we build a website to that wireframe, it is not open to you to claim that the arrangement of the website is unsuitable to the extent it accords with the approved wireframe.
- 2.7 We shall use reasonable endeavours to meet the performance dates specified in the SOW but any such dates shall be estimates only and time for performance shall not be of the essence of these Terms.
- 3. Your Obligations**
- 3.1 You shall at your own cost:
- 3.1.1 provide or procure for us:
- (a) access to your premises and facilities;
- (b) access to Customer Software, Customer Environment and Customer Data; and
- (c) relevant information, instructions and assistance, including reasonable access to and cooperation by your personnel,
- in each case in a timely manner and as is reasonably necessary to enable us to perform our obligations under these Terms;
- 3.1.2 prepare the location(s) at which the Services are to be performed in accordance with any specifications provided by us in advance of the relevant delivery date for the Deliverables;
- 3.1.3 co-operate with us in all matters relating to the Services;
- 3.1.4 ensure that the scope of work in any SOW is complete and accurately reflects your requirements; and
- 3.1.5 provide, in a timely manner, such data, information and facilities as we may reasonably request in order to provide the Services.

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- 3.2 You warrant that all information, data and materials provided by you to us will be, to the best of your knowledge, lawful, accurate and complete in all material respects. You warrant that you are entitled to provide such information, data and materials to us without recourse to any third party and that our use of it for the purposes of the Agreement will not infringe the rights of any third party. You will indemnify us and hold us harmless at your own expense from and against any and all Damages suffered or incurred by us (including without limitation legal expenses) as a result of your breach of any warranty in this paragraph 3.2.
- 3.3 You shall ensure that your Customer Environment, computer and operating system and/or any other hardware or software which we are asked by you to use or modify for the purposes of performing our obligations: (i) meets the minimum hardware requirements specified by us; (ii) is installed and is in working order and is available to us no later than the relevant date specified in the SOW; and (iii) is either your property or is legally licensed to you and that we are authorised to use such systems.
- 3.4 Where our performance of our obligations under this Agreement may require input from, or the involvement of, a Customer Service Provider, you shall procure the timely assistance and input of the Customer Service Provider to enable us to perform the Services in accordance with the SOW. You shall provide all reasonable assistance to us to meet our obligations under this paragraph and to mitigate delays in the performance of its obligations including by working with us to resolve any Customer Service Provider issues escalated to the Customer.
- 3.5 You shall maintain adequate insurance to cover us against accident, damage, injury and public liability arising out of the provision of the Services by us at any premises, facility or location where we are engaged by you under these Terms.
- 3.6 You shall not introduce any Virus that may infect or cause damage or otherwise disrupt our systems or its constituent elements.
- 3.7 The Services are provided at your request and you responsible for ascertaining that the Services are suitable for your own needs.
- 3.8 If you fail to perform any of your obligations as set out in the Agreement, or if performance of our obligations under these Terms is prevented or delayed by any act or omission of on your part or on the part of your Customer Service Provider, or of your clients, agents, sub-contractors or employees, then:
- 3.8.1 we may without limiting our other rights or remedies suspend performance of the Services until you perform the relevant obligation; and
- 3.8.2 you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising from your failure to perform.
- 4. Change Control**
- 4.1 Either party may at any time suggest a change to the SOW (including any requirements for the Services or Deliverables set out in such Statement of Work).
- 4.2 We will provide a proposal ("**Change Proposal**") addressing any suggested change within a reasonable period (given the scope and size of the suggested change) of the suggestion of the change. If the change was suggested by you, we may charge for preparing the Change Proposal at our standard rates then in force.
- 4.3 A Change Proposal shall specify in relation to each proposed change:
- 4.3.1 any amendments which are to be made to the Agreement; and
- 4.3.2 any resultant changes in relation to the Fees payable for, or timelines for performance of, the Services (and if the effect of the change is to reduce any requirement for the Services, we reserve the right to continue to charge any applicable Fees (or accelerate payment) to reflect any resources wasted as a result of such reduction); and
- 4.3.3 any other relevant matters that in our view might assist you to make a decision regarding the Change Proposal.
- 4.4 You will within one week after receiving any Change Proposal acting reasonably and without delay either accept or refuse the Change Proposal in writing.
- 4.5 If you accept the Change Proposal, the Agreement will be deemed to be amended to the extent necessary to incorporate the accepted variations with effect from the date of acceptance, or another date agreed by the parties.
- 5. Acceptance Testing**
- 5.1 Unless we agree an alternative procedure for Acceptance Tests in an SOW, we shall follow the Acceptance Test procedure set out in paragraphs 5.2 to 5.7.
- 5.2 The parties shall agree which Deliverables will be subject to acceptance testing in accordance with this paragraph 5 and will use their best endeavours to agree acceptance criteria for each Deliverable within such timeframe as may be appropriate in the circumstances. The acceptance criteria shall be such as are reasonably required to show that the Deliverable materially complies with any agreed requirements or specifications in the Proposal (and if no specific criteria are agreed such material compliance shall itself be the acceptance criterion).
- 5.3 We will have conducted internal pre-installation testing of each Deliverable before providing it to

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- you. You shall carry out Acceptance Tests within five (5) working days after provision of the Deliverable, which we shall be permitted to observe.
- 5.4 If any Deliverable fails to meet the acceptance criteria, you shall, within five (5) working days from the completion of testing, provide written notice to this effect, giving details of the failure(s). We shall remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time (and if necessary, repeated further if the defects remain unremedied).
- 5.5 If a defect in any Deliverable is attributable to your actions or input, our costs of remedying that defect shall be charged to you at our standard rates. For example, if our Deliverable fails to perform as expected because you have provided us with "junk data" as an input, then we shall charge for the costs of rationalising that data or otherwise addressing the defect.
- 5.6 We will use our reasonable endeavours to ensure that each Deliverable is accepted within three (3) rounds of Acceptance Testing.
- 5.7 Acceptance of the Deliverable shall be deemed to have occurred on whichever is the earliest of:
- 5.7.1 your confirmation of acceptance in writing;
- 5.7.2 the expiry of five (5) working days after the completion of Acceptance Testing, unless you have given any written notice under paragraph 5.4;
- 5.7.3 the expiry of ten (10) working days after the date of delivery of the Deliverable if Acceptance Testing has not started, or has not been pursued with due diligence; or
- 5.7.4 the use of the Deliverable by you in the course of your business (including any Site going "live").
- 6. Fees And Payment**
- 6.1 The Fees for the Services shall be set out in the SOW, provided that where the Fees are based on standard rates we may update these rates from time to time.
- 6.2 You shall pay the cost of all hotel, subsistence, travelling, data acquisition, photocopying and any other ancillary expenses reasonably incurred by us in connection with the provision of the Services, and the cost of any materials or services reasonably and properly provided by third parties required by us for the supply of the Services (such as stock images or software plugins). Significant expenses and disbursements will either be identified in the Proposal or otherwise agreed with you in advance.
- 6.3 Fees may be calculated on a time-and-materials basis or a fixed-price basis.
- 6.4 If the Fees are calculated on a time-and-materials basis:
- 6.4.1 the Fees shall be calculated in accordance with our standard daily rates; and
- 6.4.2 the standard daily fee rates for each individual person are calculated on the basis of a 7.5 hour day.
- 6.5 If the Fees are calculated on a fixed-price basis then:
- 6.5.1 we may, acting reasonably, increase the applicable Fees and charge on a time-and-materials basis if you request any change to the scope of the Services or if any change to the scope of the Services becomes necessary due to the failure of any assumption or dependency identified in our SOW;
- 6.5.2 the total price for such Services shall be the amount set out in the SOW. The total price shall be paid to us in instalments as set out in the SOW on us achieving the corresponding Project Milestone. On achieving a Project Milestone, we shall invoice you for the Fees that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in paragraph 6.4.
- 6.6 We shall invoice you for our Fees and expenses at such intervals or in such instalments as may be set out in the SOW or, unless the SOW provides otherwise:
- 6.6.1 quarterly in advance in relation to Support Services;
- 6.6.2 annually in advance in relation to Hosting and Security Update Services; and
- 6.6.3 monthly in arrears in relation to all other Services.
- 6.7 All invoices rendered are due and payable within fourteen (14) days of the date of invoice. You shall inform us in writing of any claim or dispute relating to an invoice within five (5) working days of receipt of the relevant invoice. You shall pay all amounts due under the Agreement in full without any deduction, set-off, counterclaim or withholding except as required by law.
- 6.8 Without prejudice to any other right or remedy, if you fail to pay us on the due date we reserve the right to:
- 6.8.1 charge you interest on the overdue amount at the rate provided by the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount;

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- 6.8.2 take debt recovery action to recover the sums due, in which case you shall meet all our costs of taking any such action; and
- 6.8.3 suspend all Services (and as applicable “take down” or restrict access to any relevant Site) until payment has been made in full.
- 6.9 All amounts payable by you are exclusive of amounts in respect of VAT, which you will pay where applicable.
- 6.10 We may, without prejudice to any other rights we may have, set off any liability you have to us against any liability we have to you.
- 7. Third Party Software**
- 7.1 The Services may involve the provision of Third-Party Software. To the extent that the Services involve the provision of Third-Party Software, you acknowledge:
- 7.1.1 that your use of rights in any Deliverables encompassing Third-Party Software is conditional on us obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle us to license such rights to you;
- 7.1.2 that you shall be responsible for procuring the licences required in respect of all Third-Party Software identified as Customer-Procured Third-Party Software in a SOW; and
- 7.1.3 To the extent that any Services to be provided or obligations to be performed by us are dependent on Customer-Procured Third-Party Software, you hereby agree to indemnify and hold us harmless from and against any claims, losses, damages or liabilities arising from your failure to procure such licences on terms that enable us to perform our obligations under this Agreement in accordance with the timescales set out in a SOW.
- 8. Intellectual Property Rights**
- 8.1 As between the parties, all intellectual property rights in all Deliverables shall be owned jointly by us and by you (except those elements of the Deliverables solely comprising materials provided to us by you). We hereby grant to you a worldwide, non-exclusive, royalty-free licence under our rights in such Deliverables solely to the extent necessary for you to use such Deliverables for your internal business purposes, provided that you shall comply with all applicable laws and regulations, and any applicable third party licence terms, in respect of your use of such Deliverables.
- 8.2 We may, at our discretion, agree to assign our rights as described in paragraph 8.1 to you.
- Conversely, if you are in breach of these terms, we shall have the right to require you to enter into such documentation as we reasonably require at your own cost to relinquish such rights to us so that all rights referred to in paragraph 8.1 shall belong to us entirely.
- 8.3 You shall indemnify us, keep us indemnified and hold us harmless at your own expense from and against any and all Damages suffered or incurred by us as a direct or indirect result of any claim or allegation by a third party that our possession, use, modification or adaptation of any materials provided to us by you or on your behalf in accordance with the terms of the Agreement, or any content uploaded by you to any Site, infringes the Intellectual Property Rights of that third party.
- 9. Warranty**
- 9.1 Both parties warrant that:
- 9.1.1 they have the right, power and authority to enter into this Agreement; and
- 9.1.2 they are in compliance with, and will perform their obligations under this Agreement in compliance with, all applicable law and regulations.
- 9.2 Except as otherwise set out in these Terms or a SOW, all Services shall be provided “as is”. We hereby exclude all warranties, representations and conditions in respect of such Services whether express or implied by statute, common law or otherwise to the extent permitted by law.
- 9.3 We do not warrant or represent that the Services provided by us are or will be free from faults.
- 9.4 We disclaim any warranties that the Services will be uninterrupted or error-free, that any defect in the Services can be remedied or that the Services will meet your requirements.
- 9.5 We do not warrant that any Third Party Software will be free from Defects. As between you and us, all Third Party Software is provided “as is” and is used at your risk. You acknowledge that the only warranties in relation to the Third Party Software are those contained in the applicable licence from the third-party proprietor.
- 9.6 Except as specifically stated in the Agreement, all warranties, conditions and other terms implied by statute or common law, custom, trade usage, course of dealing or otherwise, in connection with our provision of the Services or with any Deliverable, are excluded to the fullest extent permitted by law. In particular, we do not warrant that any software we develop or provide will be compatible with any operating system or other software other than those identified in the Specification nor that any such software will be immune to any form of malware, computer virus or other harmful code or secure against attack.
- 10. Liability**
- 10.1 Nothing in the Agreement excludes our liability:

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- 10.1.1 for death or personal injury caused by our negligence;
 - 10.1.2 resulting from fraud or fraudulent misrepresentation made by us; or
 - 10.1.3 for any other matter for which liability may not lawfully be limited or excluded.
- 10.2 Subject to paragraph 10.1:
- 10.2.1 we shall not be liable to you, whether in contract, tort (including negligence or breach of statutory duty), indemnity, misrepresentation, restitution or otherwise under the Agreement or in connection with its subject matter for:
 - a) any loss of business, loss of agreements or contracts, loss of data, loss of anticipated savings or depletion of goodwill (in each case whether direct or indirect); or
 - b) any failure to perform our obligations under these Terms to the extent that we are prevented from doing so as a result of a failure or delay on your part to perform any of your responsibilities or obligations under these Terms or an event of Force Majeure; or
 - c) any indirect loss of profits or any other special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and
 - 10.2.2 our total aggregate liability in contract, tort (including negligence or breach of statutory duty), indemnity, misrepresentation, restitution or otherwise for any other damages arising in connection with the performance or contemplated performance of the Agreement shall be limited to the value of the Fees paid for the Services (excluding expenses, materials and disbursements) during the six months preceding the date on which the event or occurrence giving rise to liability occurred.

11. Confidentiality

- 11.1 Each party shall keep in strict confidence all information of a confidential nature which has been disclosed by the other, or which may otherwise be obtained. Each party shall only disclose such confidential information of the other party to their employees and contractors who need to know it for the purpose of the Agreement under appropriate conditions of confidence.
- 11.2 You acknowledge and agree that any Deliverables provided by us to you as part of the Services are (except to the extent they are by their nature intended for display to the public) confidential to us.

12. Data Protection

- 12.1 If we process any personal data on your behalf when performing our obligations under the Agreement, you will be the data controller and we will be a data processor (“personal data”, “data controller” and “data processor” in each case having the meaning given in the Data Protection Legislation) and:
 - 12.1.1 you agree that the personal data may be transferred to or stored by our hosting service providers within the European Economic Area in order to carry out the Services;
 - 12.1.2 you will ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully use, process and transfer the personal data in accordance with the Agreement on your behalf;
 - 12.1.3 you will ensure that the relevant third parties have been informed of, and where applicable have given their consent to, such use, processing, and transfer as required by the Data Protection Legislation; and
 - 12.1.4 the terms set out in the Data Processing Annex (below) will apply.

13. Dispute Resolution

- 13.1 If any dispute arises in connection with this Agreement, the parties’ respective representatives shall, within fourteen (14) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 13.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (“ADR notice”) to the other party requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than thirty (30) days after the date of the ADR notice.
- 13.3 No party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 13.4 Nothing in this paragraph 13 shall prevent either party from seeking urgent injunctive relief.

14. Expiry and Termination

- 14.1 These Terms shall continue until the later of:
 - 14.1.1 the expiry of the Term; and

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14.1.2 the completion, after the expiry of the Term, of a SOW with a SOW Effective Date prior to the expiry of the Term,

unless terminated earlier in accordance with the remainder of this clause 14.

14.2 Without limiting our other rights or remedies, we may terminate the Agreement by giving you thirty (30) days' written notice.

14.3 Without limiting your other rights or remedies, you may terminate the Agreement:

14.3.1 on not less than six (6) months' written notice provided that such notice may not be issued until after the end of the first SOW;

14.3.2 any individual SOW on not less than five (5) Business Days' written notice. For the avoidance of doubt, an individual SOW may be terminated independently of the rest of the Agreement; and

14.3.3 in connection with any support or hosting Services only, by ninety (90) days' written notice).

14.4 Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

14.4.1 the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of receipt of notice in writing to do so; or

14.4.2 the other party becomes insolvent or bankrupt, enters into administration, ceases to trade or takes any step or suffers any occurrence of equivalent or similar effect.

14.5 If you terminate this Agreement in whole or in part under paragraph 14.3, then during the applicable notice period:

14.5.1 we shall continue to provide the relevant Services or, as agreed with you, cease to provide or "wind down" the relevant Services as appropriate; and

14.5.2 you shall continue to pay all applicable fees for the relevant Services as if they had been provided in full (regardless of whether or not they have in fact ceased or been "wound down") up until termination.

14.6 All payments payable to us under the Agreement shall become due immediately on its termination, without limiting our other rights and remedies.

14.7 Termination of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses 1, 7, 8, 9, 10, 11, 12 (to the extent we

continue to process any relevant personal data), 13, 14.6, 14.7, 21, 15 and 16 shall survive termination of the Agreement, however arising.

15. Non-Solicitation

You shall not during the term of the Agreement nor for a period of six (6) months following its termination, offer to employ or engage or otherwise entice away from us any person employed or engaged by us. Nothing in this clause shall prevent you from offering to employ or engage any person who has merely responded to a public advertisement of the relevant role without any other approach or solicitation having occurred.

16. General

16.1 Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from events, circumstances or causes beyond its reasonable control.

16.2 You may not assign, transfer, subcontract or deal in any other manner with any or all of your rights or obligations under the Agreement.

16.3 The Agreement constitutes a contract for the provision of services and not a contract of employment or partnership.

16.4 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and addressed to the receiving party at such address or contact details as may have been provided by that party from time to time for contact purposes.

16.5 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Neither case shall affect the validity and enforceability of the rest of the Agreement.

16.6 A waiver of any right or remedy under the Agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.7 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other.

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

16.9 Except as set out in these Terms, no variation of the Agreement, including the introduction of any

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additional terms and conditions, shall be effective unless it is agreed in writing and signed by both parties.

16.10 Subject to clause 13, the Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.

Hosting and Security Update Services

The provisions of clauses 17 to 21 inclusive will apply where we have agreed to host the Site on our servers.

17. Hosting, Availability and Downtime

17.1 We will use reasonable endeavours to provide the Hosting Services in accordance with the applicable Service Description during the Service Period (including as applicable in relation to SSL). If your use of the Hosting Services exceeds or is likely to exceed the agreed Service Description (for example if the Site will require additional disk space or bandwidth) then we will agree a variation to the Agreement with you to address the additional requirement and increase the applicable Fees (and if no such variation can be agreed, we shall have no further obligation to provide the Hosting Services to you).

17.2 You acknowledge that the Site is made available over third-party internet and communications networks and we will not be liable in relation to any delays, limitations or other problems inherent in such networks. We do not warrant that the Site's availability will be uninterrupted or error-free. Without limiting the foregoing we will not be liable for any downtime or unavailability of the Site lasting less than twenty-four (24) hours.

17.3 We may reboot servers from time to time as part of the process of applying Security Updates, during which time the Site may be unavailable. We will usually do this at night and will not normally notify you when we do this.

17.4 If the Site is down or unavailable for more than twenty-four (24) hours, then subject to paragraph 17.5:

17.4.1 we may take such action as we reasonably determine to restore the Site (including by moving the Site to an alternative server); and

17.4.2 we will, after the restoration of the Site, issue to you a reimbursement for each whole day of downtime or unavailability calculated on a pro rata basis by reference to the annual or monthly fee payable for our hosting services. Such reimbursement shall be your sole and exclusive remedy in relation to the downtime or unavailability of the Site.

17.5 We will not be responsible for any downtime or unavailability of the Site which is attributable to:

17.5.1 any planned or unplanned maintenance;

17.5.2 any Force Majeure Event;

17.5.3 any breach by you of any terms of the Agreement;

17.5.4 our, or our sub-contractor's, deliberate suspension of the Site having determined that: i) its continued availability threatens the security or performance of any other servers or networks (for example if your Site is subject to sustained DDOS or other attacks); ii) your use of the Site is in any way unlawful; or iii) you are otherwise in material breach of the Agreement.

18. Your Use of the Site

18.1 You will ensure that:

18.1.1 any personal data collected by you through or in connection with the Site, whether or not it is hosted on the Site is lawfully collected and processed;

18.1.2 any transactions and advertising you conduct through or in connection with the Site are in all ways lawful; and

18.1.3 the Site, any materials you upload to the Site, and any sites or materials to which any link on the Site resolves do not infringe any applicable laws, regulations or third party rights (and in particular are not obscene, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, constituting a breach of confidence or contempt of court, or infringing any third party Intellectual Property Rights);

18.1.4 you, and as applicable any of your users, will keep any password and/or account details issued by us or created by you or them in connection with the Services secure and confidential. For example, you may have passwords and accounts for the use of content management systems, or for FTP or cPanel access, in relation to our hosting of the Site. You must notify us of any security breach or unauthorised access to any password-protected account;

18.1.5 without limiting 18.1.4, you will comply with any additional terms and conditions we may issue in relation to cPanel or FTP access where we permit you such access.

18.2 You acknowledge that we have no control over any content placed on the Site by visitors and do not monitor the content of the Site (except to the extent such monitoring is included in any support offering comprised in the Services).

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- 18.3 You shall indemnify us against all Damages, suffered or incurred by us as a result of your breach of this paragraph 18. otherwise dispose of any such copies or data in our possession.
- 19. Backups**
- 19.1 We (or any third-party data host appointed by us) will follow back-up and archiving procedures in relation to data comprised in the Site and hosted by us in accordance with our back-up policy. If there is any loss of or damage to such data which is attributable to our breach or negligence, your sole and exclusive remedy will be for us to use reasonable endeavours to restore the lost or damaged data from the latest back-up.
- 20. Security Updates**
- 20.1 We will supply and apply Security Updates within a reasonable period after their release.
- 20.2 We are not otherwise obliged to update or maintain any software relating to the Site unless we have expressly agreed to do so as part of our support and maintenance offering or otherwise in the Proposal.
- 20.3 We are not responsible for and will have no liability to you in connection with:
- 20.3.1 any defects in Security Updates; or
- 20.3.2 any inability to apply Security Updates which is attributable to major changes in the relevant content management system, module, extension or plugin; or
- 20.3.3 the unavailability of any suitable, current version of any Security Update.
- 21. Migration and Data Clearance**
- 21.1 Your access to the Site and to any other data in our possession relating to the Services shall cease upon termination of the Agreement. We will, if requested by you, and subject to the payment by you of the relevant additional Fees:
- 21.1.1 provide you with migration assistance services (for which we will charge up to £295 plus VAT) to assist in the transfer of the Services to any replacement provider, including closing down any hosting Services we provide to you, removing files relating to the Services from our systems, and, where relevant, exporting data to you in an agreed format and medium; and/or
- 21.1.2 provide you with a copy of the Site in an agreed format and medium (for which we will charge such additional fee as may be agreed).
- 21.2 We will retain copies of the Site and any relevant data (in each case as at the date of termination) for a period of (2) months after the termination of the Agreement, and thereafter will destroy or
- Support Services**
- The provisions of clauses 22 to 23 inclusive will apply where we have agreed to provide additional support services in relation to any Site.
- 22. Incidents**
- 22.1 In this section an “**Incident**” is a material defect or error in the Site, including any failure of the Site to perform in accordance with any Specifications;
- 23. Out of Scope**
- 23.1 We will have no obligation to provide the support Services in relation to any issue raised by you which is a failure of the Site to meet your requirements which is not an Incident (e.g., where such failure arises as a result of a design feature or limitation of the Site rather than a failure of the Site to perform in accordance with Specifications) (a “**Non-Incident**”). We may at your request and in our discretion provide consultancy services at our hourly rates to assist you in customising the Site to address Non-Incidents.
- 23.2 You acknowledge that we provide the support Services solely in relation to the Site and are under no obligation to provide any support and maintenance services in relation to any other software or hardware.
- 23.3 We will have no obligation to provide the support Services, (and will be entitled to charge additional sums at its standard rates for support provided by us) in relation to any Incident or other matter which, in our reasonable opinion, arises from:
- 23.3.1 major changes in the relevant content management system or plugin;
- 23.3.2 defects in Third Party Software (in which case we may liaise with the proprietor of the relevant Third-Party Software in seeking to resolve the Incident);
- 23.3.3 modifications to or attempts to repair the Site made without our prior written approval;
- 23.3.4 any defect, bug, compatibility or interface issue with any software other than that comprised in the Site or with which the Site is recommended for use in the Proposal or Specification;
- 23.3.5 any failure or defect in your systems;
- 23.3.6 failure by you to implement any recommendations for corrective action outlined by us in any report or correspondence we may provide to you; or
- 23.3.7 any Force Majeure Event.

Data Processing Annex

This Data Processing Annex applies when, in the course of providing our services, we are acting as your “data processor” for the purposes of the Data Protection Legislation. Normally this applies when we host data on your behalf, but it may be applicable to other services agreed with you from time to time. This Annex is supplemental to our Terms of Service and the definitions in our Terms of Service apply in it. We may agree additional instructions with you in relation to our processing of personal data from time to time.

1. Definitions

- 1.1 In this Annex **Data Protection Legislation** means the General Data Protection Regulation ((EU) 2016/679) unless and until it is no longer directly applicable in the UK, the Data Protection Act 2018 and any implementing laws, regulations and secondary legislation, or successor legislation, as amended or updated from time to time.
- 1.2 In this Annex **data controller**, **data processor**, **processing** and **personal data** all have the meanings given in the Data Protection Legislation.

2. Data Protection Obligations

- 2.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 2.2 The parties acknowledge that for the purposes of the Data Protection Legislation, you are the data controller and we are the data processor in relation to certain personal data processed by us. We may also appoint as sub-processors any of those entities listed from time to time at the following URL: <http://www.alberon.co.uk/listofsubprocessors> (“**Authorised Sub-Processors**”). Clause 3 below sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of personal data and categories of data subject.
- 2.3 We shall, in relation to the personal data described in clause 3:
 - 2.3.1 process the personal data only on your written instructions or as required by law;
 - 2.3.2 have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of, accidental loss or destruction of, or damage to, the personal data;
 - 2.3.3 ensure that all personnel who have access to and/or process the personal data are obliged to keep them confidential;
 - 2.3.4 not transfer the personal data outside of the European Economic Area unless with your prior written consent, as required by law or subject to a safeguard permitted under the Data Protection Legislation or to a country in respect of which the European Commission has made an adequacy determination;
 - 2.3.5 assist you in responding to any request from a data subject and complying with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, in each case subject to the payment of our reasonable fees;
 - 2.3.6 at your written direction delete or return the personal data on termination of the services to which their provision relates; and

- 2.3.7 maintain complete and accurate records and information to demonstrate our compliance with this clause 2, and allow you to audit our compliance (provided such audit is conducted in such a manner to minimise disruption to our business, on reasonable notice, at your cost and subject to your payment of our reasonable fees for time incurred).

- 2.4 We may appoint third party processors of the personal data described in clause 3 but shall ensure that we do so under a written agreement incorporating terms which are equivalent in their effect to those set out in this Annex.

3. Details of Processing

3.1 **Scope**

We may process certain personal data on your behalf in the performance of the following Services:

- 3.1.1 hosting services (such as hosting your website);
- 3.1.2 database services (where we clear, update, modify or develop databases containing personal data for your use, whether within your systems or our own); or
- 3.1.3 such other services as we may agree with you from time to time which are identified as involving us acting as your data processor.

3.2 **Nature**

Processing in the course of providing the specified Services to you, which means accessing, receiving, storing, creating and transmitting personal data.

3.3 **Purpose of processing**

The provision of the specified Services to you, as agreed from time to time.

3.4 **Duration of the processing**

For the duration of the performance of the Services.

3.5 **Authorised Sub-Processors**

We will not engage any sub-processor for carrying out any processing activities in respect of Personal Data without your authorisation (such authorisation not to be unreasonably withheld, conditioned or delayed) and provided that: (a) the you authorise (and this Annex shall be deemed to be written authorisation) the appointment of any of the Authorised Sub-Processors; and (b) any sub-processing shall only be permitted by way of a written agreement which includes terms which are the same or equivalent to those set out in this Annex.

3.6 **Types of personal data**

Such personal data as may be processed by us:

- 3.6.1 to provide hosting services, including names, contact details, descriptions or photographs of

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individuals as described in the data or content hosted by us, and the contents of correspondence sent via the hosted service (such as via website enquiry forms); and

3.6.2 to provide database services, including the personal data contained in the relevant databases; and

3.6.3 to provide such other services as may be agreed from time to time which involve us acting as your data processor.

3.7 Categories of data subject:

3.7.1 In relation to web hosting, any data subject featured on, using or submitting enquiries through the Site.

3.7.2 In relation to database services, any data subject whose personal data is contained in the database.

[Click here](#) to view the list of Alberon's Sub Processors.