



STANDARD TERMS AND CONDITIONS

for

Website Development, Hosting, Support & Maintenance and E-Commerce Services

1. INTERPRETATION

1.1 The following definitions in this clause apply in these terms:

"Background Materials" all materials, including software code and documentation, information, diagrams, images and recorded material (in tangible or electronic form) which VERTICAL PLUS owns before the date of the Contract or develops or acquires independently of the Services or for its general benefit or that of its clients generally, but not including the Exit Materials;

"Change of Control" any change in the entity ownership occurring when any person or company, directly or indirectly, becomes the beneficial owner of more than 50% of the voting rights of the entity or the right to control or acquire such voting rights;

"Client Materials" means any text, audio visual, visual works or any other materials provided by the CLIENT to VERTICAL PLUS for use in undertaking the Services or for inclusion in the Website;

"Confidential Information" all information whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is identified as confidential at the time of disclosure or which ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure;

"Contract" the contract for the provision of the Services by VERTICAL PLUS to the CLIENT formed as provided in these terms and incorporating these terms;

"Contract Particulars" the document setting out the specification for the Contract and the Services agreed between the VERTICAL PLUS and the CLIENT to which these terms relate;

"Critical Fault" a reproducible fault with the Website which substantially hinders or prevents the CLIENT or its customers from using a material part of the functionality of the Website;

"Developed Materials" means any text, audio visual, visual works or any other materials whomsoever they are provided by which are developed by or on behalf of VERTICAL PLUS for display on or incorporation in the Website other than the Client materials, as developed from time to time;

"Effective Date" the later of the date stated in the Contract and the date on which any deposit or pre-payment required under the Contract has been received in cleared funds by VERTICAL PLUS;

"Exit Materials" means the Developed Materials visible to the public and bespoke to the Website as at the date of termination of the [Contract/Hosting Services/Maintenance and Development Services];

"Intellectual Property Rights" all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off;

"Open-Source Software" any software programs which are licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (<http://www.opensource.org/docs/definition.php>);



"**Order**" the CLIENT's request for Services to which these terms relate;

"**Products**" the products and/or services sold by the CLIENT from time to time via e-commerce sales channels, that are relevant to the Websites which are subject to this contract;

"**Services**" such of the Development Services, Hosting Services, Support & Maintenance Services and E-commerce Services as agreed to be provided by VERTICAL PLUS to the CLIENT pursuant to the Contract as identified in the Contract Particulars or otherwise agreed in writing between VERTICAL PLUS and the CLIENT from time to time, and further described in the schedule to these terms;

"**Terms**" these Standard Terms and Conditions and included in and subject as varied by the Contract Particulars.

2. FORMATION OF LEGAL CONTRACT

- 2.1 All Orders constitute a request by the CLIENT which VERTICAL PLUS is free to accept or decline at VERTICAL PLUS' discretion. No legal contract will exist between the CLIENT and VERTICAL PLUS in respect of any Order unless and until the Order is accepted by VERTICAL PLUS. Confirmation of receipt of an Order is not an acceptance of that Order and, if VERTICAL PLUS accepts the Order, it will provide the CLIENT with express confirmation of this.
- 2.2 Acceptance of any Order will be subject to these terms. VERTICAL PLUS may revise and amend these terms from time to time but this will not affect any Orders accepted before the date of the change unless it is a change that VERTICAL PLUS is obliged to make by law or government or regulatory authority.
- 2.3 The only terms of the Contract formed if VERTICAL PLUS accepts the Order shall be as provided by these terms and those contained expressly or by reference in the Contract Particulars or the Agreed Specification. Any other statement or representation, written or oral, made or given, prior to the date of the Contract by any representatives of VERTICAL PLUS is hereby excluded unless incorporated in these terms, but this shall not operate to limit or exclude VERTICAL PLUS' liability for fraudulent or negligent misrepresentation or any statutory warranty or condition that cannot be excluded as a matter of law. Any additional or limiting terms sought to be imposed by the CLIENT which VERTICAL PLUS has not expressly accepted shall have no effect.
- 2.4 The CLIENT is responsible for ensuring that it checks these terms and the information set out in its Order carefully before submitting the Order to ensure that they are complete and accurate. If VERTICAL PLUS has already accepted an Order, the CLIENT will be bound by the Contract as so formed and VERTICAL PLUS will be under no obligation to accept any request by the CLIENT to cancel or vary the Contract by reason of any error or omission on the part of the CLIENT.

3. EXCLUSIVE APPOINTMENT

- 3.1 On formation of the Contract, the CLIENT appoints VERTICAL PLUS as its exclusive provider of the agreed Services from the date of the Contract for the Contract Period and, subject to clause 5, in consideration for the payment by the CLIENT to VERTICAL PLUS of the fees and commissions as set out in the Contract VERTICAL PLUS shall provide the Services to the CLIENT during the Contract Period.
- 3.2 Where the Services include E-Commerce Services, the CLIENT undertakes not during the Contract Period itself to market, promote or sell its Products via an e-commerce website or any on third party websites without the prior written consent of VERTICAL PLUS.

4. RELATIONSHIP MANAGEMENT

- 4.1 Each party shall appoint a representative to manage and co-ordinate the performance of its obligations under these terms (each a "**Relationship Manager**") who shall have the authority contractually to bind the party on matters relating to the Services.
- 4.2 The parties' respective Relationship Managers shall communicate on a regular basis, being not less than every six weeks, to discuss progress in relation to the Services and, in particular, to discuss sales performance and any potential activities.
- 4.3 The parties shall use reasonable endeavours to ensure that the same person acts as the relevant party's Relationship Manager throughout the Term.



5. EXCLUDED SERVICES

- 5.1 The CLIENT acknowledges and agrees that, unless otherwise expressly agreed in writing by VERTICAL PLUS, VERTICAL PLUS shall not be responsible for any changes to any Website or any other activity or update that are not specifically part of the Development Services or E-Commerce Services provided by VERTICAL PLUS.
- 5.2 The CLIENT will be provided with reasonable training for up to 2 of the CLIENT's personnel on the use of the VERTICAL PLUS content management system made available to the CLIENT as part of the Services to enable the CLIENT to make content updates to the Website. The CLIENT shall not itself or with the assistance of any other person seek to hack or otherwise gain access to the content management system or the Website so as to be able to access or make any changes to any of the Background Materials or VERTICAL PLUS' systems or other software or materials comprised in or interoperating with the Website that is not clearly and evidently intended for access via the content management system.
- 5.3 Resolution of issues caused by circumstances referred to in clause [6.4]

6. CLIENT'S SPECIFIC RESPONSIBILITIES

- 6.1 The CLIENT shall:
 - 6.1.1 promptly and fully co-operate with VERTICAL PLUS in all matters relating to the Services, including the appointment of the CLIENT's Relationship Manager;
 - 6.1.2 provide VERTICAL PLUS with access to, and use of, all information, data and documentation reasonably required by VERTICAL PLUS for the performance by VERTICAL PLUS of its obligations under these terms; and
 - 6.1.3 prior to the commencement of the Services and for the duration of the Contract Period, obtain and maintain all necessary licences (including intellectual property licences) and consents and comply with all relevant legislation in relation to the Services, the use of Client Materials and the sale and use of the Products insofar as such licences, consents and legislation relate to the CLIENT's business, premises, Products, staff and equipment;
 - 6.1.4 be responsible for complying with applicable laws relating to the sale of the Products via the Website including, without limitation, product liability laws, providing website terms and conditions, sale terms and conditions and privacy policies and a privacy notice that comply with the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, The General Data Protection Regulation (EU) 2016/679, The Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013. The CLIENT shall promptly notifying VERTICAL PLUS in respect of any legal requirements specific to the sale of the Products via the Website;
 - 6.1.5 ensure that the Client Materials and all other Website content provided by or on behalf of the CLIENT, comply with all applicable laws, regulations and third party rights (including ensuring that such material is not obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) ("**Inappropriate Content**"). VERTICAL PLUS reserves the right to remove from the Website any content that it reasonably considers is or may be Inappropriate Content and shall notify the CLIENT of this. The CLIENT shall indemnify, defend and hold harmless VERTICAL PLUS on demand against all claims, actions, proceedings, and all damages, losses, fines, judgments, demands, fees, costs and expenses (including legal fees and disbursements on a full indemnity basis) arising as a result of any action or claim in respect of any such Inappropriate Content;
 - 6.1.6 maintain adequate product liability insurance and indemnify VERTICAL PLUS against all or any costs, claims, damages or expenses incurred by VERTICAL PLUS or for which VERTICAL PLUS may become liable with respect to any product liability claim relating to Products supplied or put into use by the CLIENT.



- 6.2 Where the CLIENT is engaging VERTICAL PLUS to provide E-Commerce Services, additional requirements of the CLIENT relating to the operation of its e-commerce business will apply for the protection and promotion of the business as will be notified to the CLIENT by VERTICAL PLUS before the formation of the Contract.
- 6.3 If VERTICAL PLUS's performance of its obligations under these terms is prevented or delayed by any act or omission of the CLIENT, its agents, subcontractors, consultants or employees (including any failure of the CLIENT's equipment), VERTICAL PLUS shall not be liable for any costs, charges or losses sustained or incurred by the CLIENT that arise directly or indirectly from such prevention or delay and shall be entitled to claim from the CLIENT damages for any resultant loss of fees and commissions that would otherwise have been payable to VERTICAL PLUS.
- 6.4 VERTICAL PLUS shall not be in breach of these terms and shall not be liable for any failure or delay in the provision of the Services, to the extent that such failure or delay is caused by the CLIENT's failure to comply with its obligations under the Contract or these terms and/or by external factors beyond the reasonable control of VERTICAL PLUS (including, without limitation, new software releases in relation to internet browser software or other third party software affecting the Website or access to the Website by the public generally or the variable nature of the CLIENT's or the CLIENT's customers' computer systems (including firewalls)).
- 6.5 In the event that VERTICAL PLUS identifies that additional services are required to resolve any issue to which clause [6.4] relates, it shall notify the CLIENT of the same and the CLIENT and VERTICAL PLUS shall cooperate in good faith to agree such additional services and the fees payable for them, which shall be payable in full by the CLIENT or such other proportion as VERTICAL PLUS considers reasonable.
- 6.6 The CLIENT shall not, without the prior written consent of VERTICAL PLUS, at any time from the date of these terms to the expiry of six months after the last date of supply of the Services, solicit or entice away from VERTICAL PLUS or employ or attempt to employ any person who is, or has been, engaged as an officer, technical or skilled employee, consultant or subcontractor of VERTICAL PLUS in the provision of the Services.

7. FEES AND PAYMENT

- 7.1 The Fees and Commissions payable for the Services shall be as set out in the Contract Particulars.
- 7.2 Additional fees may be payable by the CLIENT for any additional services requested by the CLIENT and agreed to be provided by VERTICAL PLUS as set out in the Order as accepted by VERTICAL PLUS or otherwise agreed in writing between them. If no fees are stated therein, such additional fees shall be calculated in accordance with VERTICAL PLUS' standard rates from time to time for such services.
- 7.3 VERTICAL PLUS reserves the right to revisit and increase the agreed fees or its standard rates for its services at any time in the event of any material increase in VERTICAL PLUS' costs for providing the same arising as a result of variations in the rates and conditions of labour and cost of supplies occurring after the date of the Contract, or due to the operation of any Act of Parliament, order, regulation or other legal requirement not in force at the date of the Contract or changes to such legal requirements made after the date of the Contract. In such circumstances VERTICAL PLUS will be entitled to increase such fees and prices by a reasonable amount consequent upon such increased costs to it by giving written notice to the CLIENT of such increase.
- 7.4 All payments referred to in these terms are stated exclusive of value added tax and all other similar taxes and duties payable in respect of such payments, which shall additionally be payable by the CLIENT.
- 7.5 All amounts due under these terms shall be paid in full without any deduction or withholding other than as required by law and the CLIENT shall not be entitled to assert any credit, set-off, deduction, counterclaim or abatement of any nature whatsoever against VERTICAL PLUS in order to justify withholding payment of any such amount in whole or in part.
- 7.6 Without prejudice to any other right or remedy that VERTICAL PLUS may have, if the CLIENT fails to pay VERTICAL PLUS on the due date VERTICAL PLUS may:
- 7.6.1 suspend any or all of its provision of Services to the CLIENT until payment is received in full; and



- 7.6.2 charge interest on such sums at a rate equivalent to 4% a year above the bank of England base rate, from time to time in force, such interest to accrue on a daily basis and apply from the date for payment until actual payment in full, whether before or after judgment; and
- 7.6.3 recover its reasonable debt recovery costs in a sum equivalent to that provided for in the Late Payment of Commercial Debts (Interest) Act 1998 or any prevailing statutory provisions which apply; and
- 7.6.4 recover its reasonable legal costs if proceedings are issued for recovery of a debt for the CLIENT's failure to pay VERTICAL PLUS' invoice, on the standard basis, regardless of whether the claim be allocated to the small claims track.

8. WARRANTIES

- 8.1 Each of the parties warrants, represents and undertakes to the other that it has full power and authority to enter into and perform the Contract in accordance with these terms.
- 8.2 Subject to clauses 8.3 and 9.9, VERTICAL PLUS warrants, represents and undertakes that:
 - 8.2.1 it shall perform the Services with reasonable care and skill;
 - 8.2.2 it has and will retain throughout the Contract Period all right title and authority to grant to the to the CLIENT the rights and licences expressed to be granted in these terms and has obtained all necessary consents and licences to provide the Services; and
 - 8.2.3 the software comprised in or utilised by it in the hosting of the Website, including the Developed Materials and the Background Materials, and the provision of the Services shall not infringe the Intellectual Property Rights of any third parties.
- 8.3 VERTICAL PLUS shall not be liable under clause 8.2 for any breach of warranty arising from: (i) the Client Materials; (i) software other than the Website Software running in the CLIENT's computing environment of which VERTICAL PLUS was not aware or did not approve; and/or (ii) modifications or customisations made by or on behalf of the CLIENT to the Website without the consent of VERTICAL PLUS.
- 8.4 Unless expressly stated in these terms, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care are, to the fullest extent permitted by applicable law, excluded from these terms.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in the Background Materials and the Website Software and any subsequent modifications to any of them shall be and remain vested in VERTICAL PLUS. To the extent that those form part of the Website, VERTICAL PLUS hereby grants to the CLIENT a royalty-free, worldwide, non-exclusive licence during the Contract Period only to use such Intellectual Property Rights for the sole purpose of operating the Website.
- 9.2 Subject to clause 9.4, all Intellectual Property Rights in the Developed Materials and any subsequent modifications to them shall be and remain vested in VERTICAL PLUS. To the extent that those form part of the Website, VERTICAL PLUS hereby grants to the CLIENT a royalty-free, worldwide, exclusive licence during the Contract Period only to use such Intellectual Property Rights for the sole purpose of operating the Website.
- 9.3 The CLIENT hereby grants to VERTICAL PLUS (or in the case of third party materials shall procure the grant to VERTICAL PLUS of) a royalty-free, non-transferable, non-exclusive licence during the Contract Period only to use the Client Materials and any other information, know-how and materials made available by the CLIENT to VERTICAL PLUS under or in connection with undertaking the agreed Services solely to the extent necessary to enable VERTICAL PLUS to perform its obligations under the Contract.
- 9.4 On termination of the Contract, other than due to the default or insolvency of the CLIENT, VERTICAL PLUS will assign to the CLIENT for no additional consideration the Intellectual Property Rights comprised in the Exit Materials. All other rights in the Background Materials and the Developed Materials and other Intellectual Property Rights of VERTICAL PLUS are reserved.



- 9.5 Subject to clause 9.7, the CLIENT shall indemnify, defend and hold harmless VERTICAL PLUS on demand against all claims, actions, proceedings, and all damages, losses, fines, judgments, demands, fees, costs and expenses (including legal fees and disbursements on a full indemnity basis) arising as a result of any action or claim that the Client Materials and any other information, know-how and materials made available by the CLIENT to VERTICAL PLUS under or in connection with the Contract infringe the Intellectual Property Rights of any third party.
- 9.6 Subject to clauses 9.7 and 9.8, VERTICAL PLUS shall indemnify, defend and hold harmless the CLIENT on demand against all claims, actions, proceedings, and all damages, losses, fines, judgments, demands, fees, costs and expenses (including legal fees and disbursements on a full indemnity basis) arising as a result of any action or claim that the Background Materials incorporated into the Website or the Developed Materials or the Website Software infringe any Intellectual Property Rights of any third party.
- 9.7 The indemnities in clauses 9.5 and 9.6 are subject to the following conditions:
- 9.7.1 the indemnified party promptly notifies the indemnifier in writing of the claim;
 - 9.7.2 the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;
 - 9.7.3 the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require;
 - 9.7.4 the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim; and
 - 9.7.5 the indemnities may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.
- 9.8 Any Open-Source Software provided by VERTICAL PLUS are used in accordance with the terms and conditions of the specific licence under which the relevant Open Source Software is distributed and such Open Source Software is made available "as is" and, notwithstanding any other provision in these terms, clauses 8.2 and 9.5 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software incorporated into the Website Software.
- 9.9 If the CLIENT's use or possession during the Contract Period of the Website Software or the Developed Materials or any part of them in accordance with these terms is held by a court of competent jurisdiction to constitute an infringement or, in the reasonable opinion of the CLIENT, is likely to be held to constitute an infringement of a third party's Intellectual Property Rights, VERTICAL PLUS may at its option and at its own expense:
- 9.9.1 procure for the CLIENT the right to continue using and possessing the Website Software or the Developed Materials or relevant part of the Website Software or the Developed Materials; or
 - 9.9.2 promptly modify or replace the Website Software or the Developed Materials or relevant part of the Website Software or the Developed Materials without detracting from the overall performance of the Website so as to avoid the infringement; or
 - 9.9.3 if the remedies in clauses 9.9.1 and/or 9.9.2 cannot be achieved, VERTICAL PLUS may promptly remove the Website Software or the Developed Materials or relevant part of the Website Software or the Developed Materials from the CLIENT's Website and computing environment and immediately refund to CLIENT all sums paid to VERTICAL PLUS under these terms by way of mitigation of its liability under clause 9.6 for the period of time in which the infringement occurred

10. CONFIDENTIALITY

- 10.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care. Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.



- 10.2 The obligations set out in this clause 10 shall not apply to Confidential Information which the receiving party can demonstrate is or has become publicly known other than through breach of this clause 10; or
- 10.2.1 was in possession of the receiving party prior to disclosure by the other party; or
 - 10.2.2 was received by the receiving party from an independent third party who has full right of disclosure; or
 - 10.2.3 was independently developed by the receiving party; or
 - 10.2.4 was required by law to be disclosed by governmental authority, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement regarding the manner of such disclosure (but without prejudice to any obligation to comply with any law).
- 10.3 The obligations of confidentiality in this clause 9 shall not be affected by the expiry or termination of these terms.

11. DATA PROTECTION

- 11.1 Each party warrants, represents and undertakes to the other party that it shall comply with its respective obligations under the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) (EU) 2016/679 in so far as the same is incorporated into English law.
- 11.2 To the extent that the Services involve the processing of any personal data by VERTICAL PLUS and in respect of which the CLIENT shall be the data controller, VERTICAL PLUS shall process such personal data as a data processor in accordance with the VERTICAL PLUS Data Processing Addendum incorporated into these terms and as the same may be amended by VERTICAL PLUS on notice to the CLIENT from time to time.

12. LIMITATION OF LIABILITY

- 12.1 Nothing in this clause 12 shall limit either party's liability:
- 12.1.1 for death or personal injury resulting from negligence; or
 - 12.1.2 for any damage or liability incurred as a result of fraud or fraudulent misrepresentation;
 - 12.1.3 for breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 12.1.4 under the indemnities at clauses 9.4 and 9.5.
- 12.2 Subject to clause 12.1, neither party shall be liable in contract, tort (including negligence) or for breach of statutory duty or in any other way for:
- 12.2.1 any loss arising from or in connection with loss of revenues, profits, contracts or business or failure to realise anticipated savings;
 - 12.2.2 any loss of goodwill or reputation;
 - 12.2.3 any indirect or consequential losses; or
 - 12.2.4 loss or corruption of data and information.
- 12.3 Subject to clause 12.1, the total aggregate liability of each party arising under or in connection with these terms whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to
- 12.3.1 in the case of E-Commerce Services only, a sum equal to the total commissions payable during the 12-month period immediately before the date on which the cause of action first arose; and
 - 12.3.2 in any other case, £15,000.

13. TERM AND TERMINATION

- 13.1 Subject always to earlier termination by mutual agreement or pursuant to the Contract Particulars or clauses 13.2 to 13.5 inclusive and clause 14.4 of these terms, the Contract shall continue:



- 13.1.1 in the case of Development Services, from the Effective Date until completion of the development of the Website in all material respects in accordance with the agreed specification;
 - 13.1.2 in the case of Hosting Services and Support & Maintenance Services (if applicable), for an initial period of 12 months from the Effective Date and thereafter for successive periods of 4 months unless and until earlier terminated as provided in these terms or on not less than 3 months' prior written notice to expire on an anniversary date of the date of the Effective Date given by the CLIENT to VERTICAL PLUS or by VERTICAL PLUS to the CLIENT provided that where the CLIENT has also contracted for the E-Commerce Services, it shall not be entitled to terminate the Hosting Services or the Support & Maintenance Services on a date earlier than the date of termination of the E-Commerce Services;
 - 13.1.3 in the case of E-Commerce Services, for an Initial Period as set out in the Contract Particulars (or if not so provided an Initial Period of 8 months) and shall continue after the end of such Initial Period unless and until terminated as provided in these terms or by either party giving to the other not less than twelve months' written notice in writing such notice to expire on or at any time after the expiry of the Initial Period;
- in each case referred to in these terms as "the **Term**".
- 13.2 If Support and Maintenance Services are provided with the Hosting Services, the Support and Maintenance Services will terminate automatically on termination of the Hosting Services.
 - 13.3 In the case of E-Commerce Services, the CLIENT may terminate the E-Commerce Services at any time, including during the Initial Period, on giving not less than 30 days' prior written notice to VERTICAL PLUS subject to the payment by the CLIENT of an Exit Fee. The CLIENT shall, as a condition of early termination, be required to pay reasonable compensation to VERTICAL PLUS as calculated as follows ("**Exit Fee**"):
 - 13.3.1 £5,000 plus VAT if the Contract is terminated within the period of 10 months of the commencement of the E-Commerce Services; or
 - 13.3.2 in any other case, a sum equal to ten times the highest monthly Commissions payable in any month during the 6 months period prior to service of CLIENT's notice to terminate.
 - 13.4 VERTICAL PLUS may terminate the Contract and cease provision of all of the Services immediately by written notice to the CLIENT if there is any Change of Control of the CLIENT.
 - 13.5 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract with immediate effect by written notice to the other party if the other party commits a material or persistent breach of any of the terms of the Contract or these terms and (if such a breach is remediable) fails to remedy that breach within 30 days of the defaulting party being notified in writing of the breach.
 - 13.6 On expiry or termination of these terms:
 - 13.6.1 the CLIENT shall immediately pay to VERTICAL PLUS all of VERTICAL PLUS's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, VERTICAL PLUS may submit an invoice which shall be payable immediately on receipt;
 - 13.6.2 subject to and without prejudice to VERTICAL PLUS's obligations in clause 13.6.3, each party shall promptly deliver to the other party all documents and materials containing the other party's Confidential Information or Intellectual Property Rights or any other data or information disclosed or supplied by the other party under or in connection with these terms or, at the other party's written request and option, destroy them and provide evidence of their destruction to the other party;
 - 13.6.3 subject to the CLIENT having paid all of VERTICAL PLUS's outstanding unpaid invoices and interest as provided in clause 13.6.1 (including any Exit Fee payable), VERTICAL PLUS shall provide to the CLIENT any information in VERTICAL PLUS's possession that forms part of the Exit Materials (for the avoidance of doubt not including any Background Materials, and not including any Developed Materials that are no longer comprised in the Exit Materials, and not including the content management system) so far as may reasonably be required for the purposes of creating a replacement CLIENT website. The CLIENT shall



pay VERTICAL PLUS in full for its reasonable cost and expense of collating and transferring such Exit Materials on a time and materials basis; and

- 13.6.4 the parties shall have no further obligations or rights under these terms, without prejudice to those which have accrued to either party prior to termination or expiry save that clauses 1, 2, 7 to 12, this clause 13.6, 14 and 15, together with those other clauses the survival of which is necessary for the interpretation or enforcement of these terms or which by their nature can be reasonably interpreted as surviving the expiry or termination of these terms, shall continue to have effect after such expiry or termination.

14. FORCE MAJEURE

- 14.1 Provided that it has complied with the provisions of clause 14.4, a party shall not be in breach of these terms, nor liable for any failure or delay in performance of any obligations under these terms (and, subject to clause 14.4 14.3, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("**Force Majeure Event**"), including but not limited to non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); interruption or failure in communications networks and facilities (including the internet), interruption or failure of utility services, pandemic or epidemic, and Government directives or guidance requiring or advising businesses to change their working practices.
- 14.2 The corresponding obligations of the other party will be suspended to the same extent.
- 14.3 Any party that is subject to a Force Majeure Event shall not be in breach of these terms provided that:
- 14.3.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- 14.3.2 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under these terms in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 14.4 If the Force Majeure Event prevails for a continuous period of more than 14 days, either party may terminate these terms by giving 14 days' written notice to all the other party. On the expiry of this notice period, these terms will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of these terms occurring prior to such termination.

15. GENERAL

- 15.1 Any notice given under these terms shall be in writing and served by hand, prepaid first class recorded delivery (including without limitation special delivery) or first class registered post or prepaid international recorded airmail to the relevant addressee at the address referred to on page 1 of these terms or such other address (which may include an email address) as the relevant party may designate to the other in writing from time to time. Any such notice shall be deemed to have been served at the time of delivery or, if sent by email to a designated email address, at the time of transmission provided that no delivery failure report is issued and that receipt of the email has been acknowledged.
- 15.2 Nothing in these terms shall create or be deemed to create a partnership, joint venture or principal-agent relationship between the parties and neither party shall have authority to bind the other in any way.
- 15.3 All media releases, public announcements and public disclosures by VERTICAL PLUS relating to these terms or its subject matter, including promotional or marketing material, shall be co-ordinated with the CLIENT and approved by the CLIENT prior to release.
- 15.4 No provision of these terms shall be modified or varied without the written consent of the parties. For the avoidance of doubt, no modification or variation of these terms shall be valid if made by email.
- 15.5 The CLIENT may not assign, sub-contract or in any other way transfer any of its rights or obligations under these terms. VERTICAL PLUS may assign or transfer any of its rights or obligations under these terms, provided it gives prior written notice to the CLIENT.



- 15.6 In no event will any delay, failure or omission (in whole or in part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under these terms or by law, be deemed to be or construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question, or operate so as to bar the enforcement of that, or any other right, power, privilege, claim or remedy, in any other instance at any time or times subsequently.
- 15.7 A person who is not a party to these terms has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of these terms but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 15.8 These terms constitutes the entire agreement and understanding of the parties relating to the subject matter of these terms and supersedes any previous agreement or understanding between the parties in relation to such subject matter. In entering into the Contract, the parties have not relied on any statement, representation, warranty, understanding, undertaking, promise or assurance (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in the Contract. Each party irrevocably and unconditionally waives all claims, rights and remedies which but for this clause it might otherwise have had in relation to any of the foregoing. Nothing in this clause 14.8 shall limit or exclude any liability for fraud.
- 15.9 These terms shall be governed by and construed in accordance with the laws of England and each party irrevocably submits to the exclusive jurisdiction of the English courts.
- 15.10 These terms may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.



SCHEDULE - THE SERVICES

1. DEVELOPMENT SERVICES

- 1.1. Subject to such Services being included in the Contract, VERTICAL PLUS shall from the Effective Date use all reasonable care and skill, including reasonable liaison with the CLIENT, to develop the Website as an e-commerce website for the Products incorporating in all material respects any agreed specification for the look and feel and functionality for the Website. Any specification must be agreed in writing by VERTICAL PLUS.
- 1.2. Once VERTICAL PLUS has completed the development of the Website, VERTICAL PLUS shall notify the CLIENT and the CLIENT shall have a period of fourteen (14) days from the date of such notice in which to test the Website.
- 1.3. The CLIENT shall within the test period notify VERTICAL PLUS of any perceived Critical Faults or material non-conformity of the Website to the agreed specification. In the event that such failures or material non-conformity are notified in accordance with this clause and are accepted by VERTICAL PLUS (acting reasonably), VERTICAL PLUS shall use reasonable endeavours to rectify any such failures or non-conformity as soon as reasonably possible. The remedied Website shall then be subject to further testing in accordance with clause 1.2.
- 1.4. Acceptance of the Website by the CLIENT shall be deemed to have taken place upon the occurrence of any of the following events:
 - 1.4.1. in the event that no failures are notified to VERTICAL PLUS within 14 days of notice being given by VERTICAL PLUS of completion of the development of the Website or remedy of any reported Critical Faults or material non-conformity; or
 - 1.4.2. the Website (in whole or in part) is put into live operation by or at the request of the CLIENT other than for test purposes.

2. HOSTING SERVICES

- 2.1. Subject to such Services being included in the Contract, VERTICAL PLUS shall from the Effective Date use its reasonable endeavours to provide the Hosting Services to the CLIENT with average availability of 99% for each calendar month. This availability refers to an access point on VERTICAL PLUS's hosting provider's backbone network. It does not apply to the portion of the circuit that does not transit the hosting provider's backbone network, as the CLIENT and its customers are responsible for their own internet access and emails.
- 2.2. If the average availability is less 99% during any calendar month after the Effective Date, the CLIENT will be entitled to receive a credit of £50 for each day for which availability is below 99% provided that the CLIENT has notified VERTICAL PLUS of such non-availability within 12 hours of its occurrence. The provision of such credit is the CLIENT's sole remedy and constitutes VERTICAL PLUS's entire liability in the event of VERTICAL PLUS's failure to provide availability to the CLIENT of at least 99% during the relevant calendar month.

3. SUPPORT & MAINTENANCE SERVICES

- 3.1. Subject to such Services being included in the Contract, VERTICAL PLUS shall from the Effective Date:
 - 3.1.1. use reasonable endeavours to remedy any Critical Faults as soon as reasonably possible following the CLIENT's notification of such Critical Fault to VERTICAL PLUS; and
 - 3.1.2. use reasonable endeavours to remedy any other faults in accordance with its scheduled maintenance plan.
- 3.2. The CLIENT acknowledges and agrees that VERTICAL PLUS may in its reasonable discretion vary or change the Website, including its content management system, by written notice to the CLIENT provided always that no such variation or change materially adversely affects the functionality or agreed specification of the Website.



- 3.3. The CLIENT acknowledges and agrees that, following full consultation and agreement in principle with the CLIENT, VERTICAL PLUS may vary or change non-material elements of the Website, including its content management system, by written notice to the CLIENT provided always that no such variation or change materially adversely affects the functionality or agreed specification of the Website.
- 3.4. VERTICAL PLUS additionally reserves the right, acting reasonably, to make changes which are of a technical nature and essential to the functioning of the website without the CLIENT'S consent, although VERTICAL PLUS will endeavour to inform the CLIENT of any such changes within a reasonable period of time.

4. E-COMMERCE SERVICES

- 4.1. Subject to such Services being included in the Contract, VERTICAL PLUS shall from the Effective Date:
- 4.1.1. pay for domain name renewals for the Website;
 - 4.1.2. provide and maintain a content management system;
 - 4.1.3. update prices on the Website and add new Products to the shopping cart elements of the Website on reasonable prior notice from the CLIENT;
 - 4.1.4. monitor for potential automatic listing of Products on third party websites including Amazon.co.uk and eBay.co.uk and so far as reasonably possible maintain any such listings (subject to the CLIENT's compliance with its obligations relating to the CLIENT's business and Website under the Contract and any agreement supplemental to it);
 - 4.1.5. monitor detailed statistics from the Website analysing entrances, exits, bounces, goal conversions, dropped carts, key word use and campaign results;
 - 4.1.6. write bespoke Product descriptions and use or take images of the Products that are popular with visitors to the Website if VERTICAL PLUS, in its absolute discretion, considers this desirable;
 - 4.1.7. promote the Website through search engine optimisation (SEO) and pay-per-click advertising as VERTICAL PLUS, in its absolute discretion, considers desirable;
 - 4.1.8. carry out marketing strategies as VERTICAL PLUS shall, in its absolute discretion, consider fit;
 - 4.1.9. carry out marketing strategies as VERTICAL PLUS shall, in its absolute discretion, consider capable of producing a return on investment for both parties; and
- 4.2. and the CLIENT shall:
- 4.2.1. pay VERTICAL PLUS 'the E-Commerce deposit' as stipulated in the Contract Particulars;
 - 4.2.2. pay VERTICAL PLUS 'the Commissions' as determined pursuant to the Contract Particulars;
 - 4.2.3. agree to a rolling working business plan within one month of the Effective Date which is designed to grow sales revenues via the Website and e-commerce channels over the period of 24 months from the Effective Date;
 - 4.2.4. ship orders of Products in a timely manner within the time frames specified in the Website documentation and terms and conditions of sale, the customer's order and any intermediary's (e.g. Amazon.co.uk) required timescales;
 - 4.2.5. handle customer enquiries and complaints in a timely and professional manner to protect the brand and reputation of the respective parties;
 - 4.2.6. use all reasonable endeavours to maintain sufficient stocks of Products to meet reasonably anticipated demand and promptly to restock items which have sold;
 - 4.2.7. use all reasonable endeavours to refresh its range of Products to maintain customer interest and to enable the Website to remain competitive and grow revenues;
 - 4.2.8. ensure prices are competitive so that an agreed pricing strategy is in place to compete with at least some equivalent products of competitors;
 - 4.2.9. be entitled to determine its own customer cancellation policy provided that it complies with applicable laws. VERTICAL PLUS acknowledges and agrees that Commissions shall not be payable in respect of any sales where such a sale is cancelled during the month in which the sale was concluded and up to and including 14 days following the end of such month and the sales price refunded to the customer. To claim a refund of Commissions, the CLIENT must notify VERTICAL PLUS of any such cancellations by the end of the month in which the cancellation occurs and provide a written explanation for the cancellation. The CLIENT may, in its sole discretion, accept later cancellations but shall remain liable for the Commissions in respect of such sales;



- 4.2.10.** no later than the twentieth day after the end of each month submit to VERTICAL PLUS a schedule of all relevant sales of Products other than directly through the Website (including telephone phone sales and sales through third party websites); and
- 4.2.11.** keep separate, complete and accurate books of account and records together with supporting documentation of all transactions which relate to or affect these terms during and for at least 2 months after the Term. The CLIENT shall procure that VERTICAL PLUS and/or its representatives have reasonable access to inspect and audit such records (with the right to make copies and take excerpts) upon reasonable notice during normal business hours during and up to two months after the Term.
- 4.3.** Each party shall be responsible for 50% of the third party costs incurred by VERTICAL PLUS on any agreed pay per click campaigns undertaken in respect of the promotion of the Website or the Products. The CLIENT shall not unreasonably withhold or delay consent to any such campaigns where the target is a return on investment of £10 for every £1 spent. Payment of the CLIENT's share of such costs shall be made to VERTICAL PLUS in cleared funds within [5] days of written demand from VERTICAL PLUS.
- 4.4.** VERTICAL PLUS shall submit to the CLIENT a valid value added tax invoice for the Commission due to VERTICAL PLUS 14 days after the end of each month, which such invoice shall then be due for immediate payment.