Website and software development supplementary terms

1. Interpretation

1.1. The following definitions and rules of interpretation apply in these supplementary terms.

Acceptance means the acceptance or deemed acceptance of the Website, Application and/or Software (as applicable) by the Customer pursuant to paragraph 4.

Acceptance Tests means the tests to be carried out on the Website and/or Software (as applicable) as set out in paragraph 4.

Application means the application software comprised in the Software.

App Store means an online or remotely accessed location where the Application will be available for downloading.

Bespoke Software means software programs developed by the Company specifically for the Customer as part of the Software.

Company Standard Software means the software programs proprietary to the Company, listed in the Quotation which are to be provided to the Customer without modification.

Computer Hardware means the computers and other equipment to be used by the Customer in conjunction with the Software, as specified in the Quotation.

Content means any content suggested to the Customer by the Company from time to time for incorporation in the Website or the Application.

Defect means an error in the Software and/ or Website that causes it to fail to operate substantially in accordance with the relevant Documentation and/or Technical Specification.

Development Fees means the fees detailed in the Quotation or in the absence of such, the Company's standard daily fee rate.

Development Services means the design and development services to be provided pursuant to these Supplementary Terms as set out in the Quotation, Scope of Work and/ or Technical Specification.

Documentation means the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by the Company.

General Conditions means the Company's general terms and conditions for the supply of services which shall be read in conjunction with these Supplementary Terms.

Licence means the licence granted under paragraph 10.

Licensed Software means the Software as specified in the Quotation (except the OpenSource Software and the Third-Party Software) and all subsequent amendments and updates to, or new versions of, such Software as may be provided under these Supplementary Terms.

Licensed Users means the employees and agents of the Customer who use the Licensed Software, and where applicable, up to the maximum number specified in the Quotation or anyone who is given access to the Application by the Customer.

Materials means the content provided to the Company by the Customer from time to time for incorporation in the Website or the Application.

Mobile Device means mobile phones, smart phones, tablets, PDAs, computers and other equipment on which the Application will operate as specified in the Quotation.

Modified Software means the standard software programs proprietary to the Company and/or third parties listed in the Quotation, modified or to be modified by the Company under these Supplementary Terms.

New Release means a new release of all or any part of the Licensed Software suitable for use by the Customer in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.

New Version means a new version of the Licensed Software released by the Company after the Acceptance Date which provides additional or improved functionality or performance.

Open-Source Software means any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (http://www.opensource.org/docs/definition.php) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at http://www.gnu.org/licenses/ gpl.html), or anything similar, included or used in, or in the development of, the Software, or with which the Software is compiled or to which it is linked.

Personal Data means data subject to protection under the data protection law in any jurisdiction.

Ready for Service means installed, tested and having passed or deemed to have passed the Acceptance Tests.

Scope of Work means the document describing the Development Services and the Deliverables to be provided by the Company to the Customer, which is agreed between the parties.

Site means the location at which the Software is to be used as specified in the Quotation.

Software means the Company Standard Software, the Third-Party Software, the Modified Software, the Open-Source Software, the Tools, the Bespoke Software and the Application.

Supplementary Terms means these supplementary terms and conditions relating to the provision of Development Services as amended from time to time.

Support Hours means 9.00am to 5.30pm Monday to Friday excluding bank holidays.

Technical Specification means the specification of the Software and/or Website (as applicable) contained in the Quotation and agreed between the Company and the Customer.

Third Party Products means any third party software or products detailed in the Quotation.

Third-Party Software means the software programs proprietary to third parties, which are to be provided to the Customer without modification.

Tools means any tools and know-how developed, and methods invented, by the Company in the course of or as a result of carrying out the Development Services, whether or not developed or invented specifically or used exclusively to carry out the Development Services.

Visitor means a visitor to the Website.

Website means the website detailed in the Quotation which is the subject of the Development Services.

Website Software means the software for the Website commissioned by the Customer as specified the Quotation.

1.2. All initial capitalised terms not defined in paragraph 1 above shall have the meaning given to them in the General Conditions.

1.3. In the event of any inconsistency between the provisions of these Supplementary Terms and the General Conditions, the terms of these Supplementary Terms shall prevail.

2. Scope

2.1. The Company shall provide the Development Services in accordance with the Quotation, any Scope of Work, any Technical Specification and these Supplementary Terms.

2.2. The Company agrees:

2.2.1. subject to the Customer complying with its obligations under these Supplementary Terms, to use its reasonable endeavours to provide the Development Services in accordance with any time frame agreed with the Customer in the Quotation, Scope of Work or Technical Specification but it cannot and does not guarantee that the Development Services and any Deliverables can or will be completed within any timetable detailed;

2.2.2. where applicable, to deliver and install the Software at the Site(s);

2.2.3. to carry out, in conjunction with the Customer, the Acceptance Tests; and

2.2.4. subject to the Customer complying with its obligations under these Supplementary Terms, to provide the Software and/or the Website (as applicable) Ready for Service by any dates agreed with the Customer, on the terms and conditions set out in these Supplementary Terms.

2.3. The Company shall not in any circumstances be liable to the Customer:

2.3.1. for failure to provide the Development Services in accordance with any timetable detailed in the Quotation;

2.3.2. for a failure or delay in providing the Development Services or Deliverables caused by any act or omission of the Customer or the Customer's agents, sub-contractors or employees as referred to clause 4.2 of the General Conditions; or

2.3.3. for a failure or delay in providing the Development Services caused by any act or omission of a third party.

3. Customer responsibilities

3.1. The Customer acknowledges that the Company's ability to provide the Development Services is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of any information and data the Customer provides to the Company. Accordingly, the Customer shall provide the Company with access to, and use of, all information, data and documentation reasonably required by the Company for the performance by the Company of its obligations under these Supplementary Terms.

3.2. The Company shall use its reasonable efforts to ensure the accurate entry or migration of any data but gives no warranties as to the completeness or accuracy of such migration. The Customer shall be responsible for checking the accuracy and completeness of the migrated data and shall promptly give sufficient details to the Company of any inaccuracies or omissions in order to permit the Company to correct them.

3.3. The Customer shall be responsible for the accuracy and completeness of any Materials and Content provided in accordance with paragraph 7.

3.4. The Customer agrees that the Company may put a by-line within the Customer's software system acknowledging design and development credit. The Customer also agrees that the provision of Development Services may be included in the Company's portfolio of completed system projects.

3.5. The Customer shall co-operate with the Company in any manner reasonably required by the Company in order to carry out the Development Services, including provision of information and data, making available suitably qualified employees and contractors of the Customer and shall:

3.5.1. provide access to the Customer's systems for the purpose of carrying out diagnostics and correction of Defects;

3.5.2. provide such further access for the Company's team to the Site(s) as is necessary to carry out the Company's obligations under these Supplementary Terms. The Customer shall obtain for the Company all permissions necessary to obtain such access;

3.5.3. when the Company's team are providing Development Services on the Site(s), provide facilities and supplies reasonably required by the Company, such as power and computer consumables.

3.6. The Customer shall comply, as soon as reasonably practicable, with all the Company's reasonable requests for information or assistance.

4. Development and acceptance

4.1. Once the Technical Specification has been agreed, the Company will commence the provision of the Development Services.

4.2. Once the Company has completed the design and development of the Website and/or Software (as appropriate) in accordance with the Quotation, Scope of Work or Technical Specification (as appropriate), the Company shall run the Acceptance Tests. The procedure set out in this paragraph 4

shall be repeated in respect of any different phases in the provision of the Development Services and any further development work agreed by the parties from time to time.

4.3. The Acceptance Tests shall test compliance of the Website and/or Software (as applicable) with the Technical Specification.

4.4. Acceptance of the Website and/or Software (as applicable) shall occur when the Website and/or Software (as applicable) has passed the Acceptance Tests. The Company shall notify the Customer when the tests have been passed and can upon request, provide the results of the Acceptance Tests to the Customer in writing.

4.5. If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom the Company has no responsibility (Non-Company Defect), the Website and or Software (as applicable) shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Company Defect. The Company shall provide assistance reasonably requested by the Customer in remedying any Non-Company Defect by supplying additional services or products. The Customer shall pay the Company in full for all such additional services and products at the Company's then current fees and prices.

4.6. Acceptance of the Website and/or Software (as applicable) shall be deemed to have taken place upon the occurrence of any of the following events:

> 4.6.1. the use of the Website and/or Software (as applicable) by the Customer in the normal course of the business;
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> 4.6.2. the Customer uses any part of the Website and/or Software (as applicable) for any revenue-earning purposes or to provide any services to third parties other than for test purposes;
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> 4.6.3. the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of 7 Business Days from the date on which the Company is ready to commence running such Acceptance Tests or retests; or
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> 4.6.4. the Customer does not expressly confirm its Acceptance of the Website and/or Software (as applicable) and does not notify the Company of any defects to the Website and/or Software (as applicable) within 7 Business Days from the date on which the Company confirms satisfactory completion of the Acceptance Tests

5. Documentation

5.1. Where applicable, the Company shall provide to the Customer, from time to time, copies of the Documentation containing sufficient up-to-date information for the proper use of the Software. Such Documentation may be supplied in electronic form.

5.2. The Customer may make such further copies of the Documentation as are reasonably necessary for the use of the Software. The Customer shall ensure that all of the Company's proprietary notices are reproduced in any such copy.

5.3. The Customer may provide copies of the Documentation to any third party who needs to know the information contained in it, provided that such third party first enters into a confidentiality obligation which is equivalent to that contained in clause 8 of the General Conditions.

6. Third Party Products

6.1. Where any Third Party Products are to be supplied as part of the Development Services, such Third Party Products will be supplied in accordance with the relevant third party's standard terms. Any additional fees for such Third Party Products will be detailed in the Quotation.

7. Website Content

7.1. Where applicable, the Company shall update the Website and/or the Application with Materials provided from time to time by the Customer and/or Content approved by the Customer. The Customer shall ensure that the Materials and/or Content do not infringe any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic,

seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (Inappropriate Content).

7.2. The Company shall include only the Materials and/or the Content approved by the Customer on the Website or Application (as appropriate).

7.3. The Customer acknowledges that the Company has no control over any content placed on the Website by Visitors and does not purport to monitor the content of the Website. The Company reserves the right to remove content from the Website where it reasonably suspects such content is Inappropriate Content. The Company shall notify the Customer if it becomes aware of any allegation that content on the Website may be Inappropriate Content.

7.4. The Customer shall indemnify the Company against all damages, losses and expenses arising as a result of any action or claim that the Materials, the Content approved by the Customer or any other material posted to, or linked from, the Website constitutes Inappropriate Content. Website where it reasonably suspects such content is Inappropriate Content. The Company shall notify the Customer if it becomes aware of any allegation that content on the Website may be Inappropriate Content.

7.5. The Company may include the statement "created by Kayo Digital" on the home page of the Website in a form to be agreed.

8. Warranties

8.1. Unless otherwise agreed in writing by the Company, the Company warrants that the Software and/or Website (as applicable) will perform substantially in accordance with the Technical Specification for a period of one month from Acceptance. If the Software and/or Website (as applicable) does not so perform, the Company shall, for no additional charge, carry out any Development Services necessary in order to ensure that the Software and/or Website (as applicable) substantially complies with the Technical Specification.

8.2. The warranty set out in paragraph 8.1 shall not apply to the extent that any failure of the Software and/or Website (as applicable) to perform substantially in accordance with the Technical Specification is caused by a force majeure event which has the meaning given in clause 11 of the General Conditions, is caused by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, is caused by the Materials or Content approved by the Customer or is caused by a third party.

8.3. The Company does not warrant or guarantee that it will be able to rectify Defects.

8.4. Any unauthorised modifications, use or improper installation of the Software and/ or Website by, or on behalf of, the Customer shall render all the Company's warranties and obligations under the Contract null and void.

8.5. The Company shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of the Company.

8.6. The Customer acknowledges that the only warranties in relation to the Third-Party Software and the Modified Software (Third Party), or the supply thereof, are those contained in the licence from the third-party company(s) of the same, and that to the extent that any of such warranties are given to the Company, it will pass on the benefit of such warranties to the Customer.

8.7. Any Open-Source Software provided by the Company may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 9.2 of the General Conditions

8.8. The Customer:

> 8.8.1. warrants to the Company that it will at all times comply with all applicable laws and regulations with respect to its activities under this agreement and any part of the Software;
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> 8.8.2. shall not access, store, distribute or transmit or cause, suffer or allow to be accessed, stored, distributed or transmitted any virus; and

8.8.3. shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company arising out of any non-compliance by the Customer with paragraphs 8.8.1 and 8.8.2.

9. Intellectual Property Rights

9.1. Pursuant to clause 7.1 of the General Conditions, all Intellectual Property Rights in the Software, Documentation and/or the Website (as applicable) (including in the content of the Website and the Website Software) but excluding the Materials and the Content (unless expressly stated to the contrary), arising in connection with the Contract shall be the property of the Company (or the appropriate third party owners, if any), and the Company hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Software and/or Website (as applicable).

9.2. The Customer shall indemnify the Company against all damages, losses and expenses arising as a result of any action or claim that the Materials and Content approved by the Customer infringe the Intellectual Property Rights of a third party.

9.3. The Customer acquires no rights in or to the Licensed Software, Documentation and/or Website (as appropriate) other than those expressly granted by these Supplementary Terms.

9.4. Without prejudice to paragraph 9.1, the Company shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:

9.4.1. caused or contributed to by the Customer's use of the Software or any New Release (as the case may be) in combination with software not supplied or approved in writing by the Company (other than the operating system of any Computer Hardware, provided that the Company was notified in writing of the identity of this operating system before these Supplementary Terms were entered into);

9.4.2. based on use of any version of the Software other than the latest version supplied by the Company, if such claim could have been avoided by the use of such supplied version; or

9.4.3. where the claim for infringement arises in respect of a feature of the Software which was specified by the Customer in the Technical Specification

9.5. If use of the Website, Software or receipt of the benefit of the Development Services becomes, or in the opinion of qualified legal counsel is likely to become, the subject of any such claim, the Company may:

9.5.1. replace all or part of the Website, the Licensed Software, the New Releases or New Versions (as the case may be) with functionally equivalent website, software or documentation without any charge to the Customer;

9.5.2. modify the Website, the Licensed Software, the New Releases or New Versions (as the case may be) as necessary to avoid such claim, provided that the Website, the Licensed Software, the New Releases or New Versions (as amended) functions in substantially the same way as the Website, the Software, the New Releases or New Versions (as the case may be) before modification;

9.5.3. procure for the Customer a licence from the relevant claimant to continue using the Website, the Licensed Software, the New Releases or New Versions (as the case may be).

9.6. If:

9.6.1. the Website, the Licensed Software or any New Release (as the case may be) is determined in a court of law to be infringing;

9.6.2. the Company is advised by a barrister of at least 10 years' call that use or possession by the Customer of the Website, the Licensed Software and/or the Documentation in accordance with these Supplementary Terms is likely to constitute infringement of a third party's rights; or

9.6.3. If an injunction or similar order is granted which prevents or restricts the use or possession by the Customer of the Website, the Licensed Software and/or the Documentation in accordance with these Supplementary Terms, and the Company is unable, after best efforts, to procure for the Customer the right to continue using the Website, the Licensed Software, the New Releases or New Versions (as the case may be) or to provide the Customer with functionally equivalent non-infringing website or software, these Supplementary Terms and the Licence will be terminated.

9.7. The Customer shall do, execute or arrange for the doing and executing of each necessary act, document and thing that the Company may consider necessary or desirable to perfect the right, title and interest of the Company in and to the Intellectual Property Rights in the Licensed Software and the Documents.

9.8. The Customer shall use reasonable endeavours to prevent any infringement of the Intellectual Property Rights in the Licensed Software and shall promptly report to the Company any such infringement that comes to its attention. In particular the Customer shall:

9.8.1. ensure that each Licensed User, before starting to use the Software, is made aware that the Licensed Software is proprietary to the Company (or the appropriate third parties) and that it may only be used and copied in accordance with the Contract; and

9.8.2. ensure that the terms and conditions of use of any App Store or Mobile Device do not conflict with any of the terms of ownership detailed in this paragraph 9.

10. Software licence and documentation

10.1. The Company grants, subject to the terms of these Supplementary Terms, the Customer the non-exclusive, non-transferable right to use the Licensed Software and the Application on Mobile Devices and the Documentation for any purpose related to the Customer's business.

10.2. The Licensed Software may be used only by Licensed Users, except as follows:

10.2.1. the Licensed Software may be used on any replacement for all or any part of the Computer Hardware;

10.2.2. the Licence may, with the prior written consent of the Company, be extended to additional Licensed Users, provided that any appropriate additional fee is paid to the Company before such use;

10.2.3. if the Customer transfers the whole of the business permanently to another site, the Licensed Software may be used at the new site by the Licensed Users, provided that the Company is informed in writing of the change of site before use of the Licensed Software commences at the new site;

10.2.4. if the Computer Hardware becomes inoperable for any reason, the Licensed Software may be temporarily used on backup equipment until the Computer Hardware is repaired, and the Customer may use the Licensed Software for the purpose of testing whether any such backup equipment is suitable for use while the Computer Hardware is inoperable; and

10.2.5. if any Site becomes temporarily unusable due to flood, fire or similar damage, or an emergency situation, the Licensed Software may be used at an alternative site until the Site is again usable, provided that the Customer gives the Company notice of such alternative site and permits the Company to inspect such site once the Licensed Software is again in use at the Site to ensure that no copy of all or any part of the Licensed Software remains at the temporary site. If the alternative site is managed by a third party, the third party must have signed a confidentiality undertaking addressed to the Company to protect the Company's Confidential Information before the Licensed Software is transferred to the alternative site.

10.3. The Customer shall comply with the Third Party Licences and shall indemnify and hold the Company harmless against any loss of damage which it may suffer or incur as a result of the Customer's breach of such terms howsoever arising.

10.4. The Company may treat the Customer's breach of any Third-Party Licence as a breach of these Supplementary Terms.

11. Transfer or reproduction of Licensed Software

11.1. The Customer may make such copies of the Licensed Software as are reasonably necessary for use in accordance with these Supplementary Terms and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Licensed Software.

11.2. The Company shall at all times own all copies of all or any part of the Licensed Software. For copies recorded on a tangible medium, the Customer shall place on each copy of all or any part of the Licensed Software a clearly visible label indicating that the copy is the property of the Company, and reproducing the Company's proprietary rights notice. For electronic copies, the Customer shall ensure that all proprietary notices contained in the Licensed Software shall be maintained in such copies and shall display when the software is run, in the same way as in the case of the Licensed Software as supplied by the Company. The Customer shall keep all copies of the Licensed Software in a secure place when not in use and shall, at all times, keep all such copies in its possession or control.

11.3. The Customer shall not:

11.3.1. sub-licence, rent, lend, assign or transfer in any other way these Supplementary Terms or the Licensed Software to any person without the prior written consent of the Company; and

11.3.2. give access to the Licensed Software through any network of computers to users who are not employees or agents of the Customer.

12. Use and adaptation of Licensed Software

12.1. The Customer may use the Licensed Software with other software.

12.2. The Customer may not make adaptations or variations of the Licensed Software without the prior consent of the Company.

12.3. The Customer may not disassemble, decompile, reverse translate or in any other manner decode the Licensed Software, except as permitted by law.

13. Support services

13.1. Any Support Services required by the Customer which is not within the scope of the Quotation shall be provided by the Company in accordance with the Support Services Supplementary Terms and unless otherwise agreed, at the Company's standard rates then in force.

14. Development Fees

14.1. The Development Fees and any additional expenses will be payable in accordance with the Quotation which may be amended from time to time.

14.2. In the event that the provision of any Development Services falls outside the scope detailed in the Quotation irrespective of whether it results from (but is not limited to) any unforeseen complications, requirements for additional functionality, the provision of information which is incorrect, inaccurate or changed or any other reason or any further amendments are required to the Deliverables outside the scope of the Quotation or there is a change to the scope of the Development Services or Deliverables detailed in the Quotation, shall be charged for at the application time and materials rate set out in the Quotation or in the absence of such, at the Company's standard daily fee rate.

15. Training

15.1. Any additional training required by the Customer which is not within the scope of the Quotation shall be provided by the Company at the Company's standard rates then in force.

16. Data Protection

16.1. For the purposes of this clause, the terms "data controller", "data processor", and "processing" bear the respective meanings given them in the Data Protection Act 1998.

16.2. The Company warrants that, to the extent it processes any Personal Data on behalf of the Customer:

> 16.2.1. it shall act only on instructions from the Customer; and

> 16.2.2. it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

16.3. The Customer acknowledges that the Company will be acting as a data processor rather than as a data controller in respect of all such data processing which the Company carries out under these Supplementary Terms.

17. Term and termination

17.1. The provision of Development Services shall commence on the date set out in the Quotation and shall, subject to earlier termination pursuant to the General Conditions, continue until the Acceptance of the Software and/or Website (as applicable) and payment of all outstanding sums.

17.2. On termination of the Development Services, all licences granted by the Company under these Supplementary Terms (other than the Licence where it has been agreed that this will continue notwithstanding termination of the Development Services if applicable) shall terminate immediately.

17.3. On termination of the Licence, the Customer shall either return to the Company or, at the Company's option, destroy all material copies of the Licensed Software and Documentation, and shall ensure that any copies of the Licensed Software on hard discs or other storage means associated with any computer equipment owned or controlled by the Customer are permanently deleted.

17.4. These Supplementary Terms shall automatically terminate on termination or expiry of the Licence, but expiry or any termination of these Supplementary Terms (however caused) shall have no effect on the Licence.

17.5. On termination of these Supplementary Terms for any reason, each party shall as soon as reasonably practicable:

> 17.5.1. return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party;

> 17.5.2. permanently delete any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other part;

> 17.5.3. return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them, provided, regarding the Customer's rights under this paragraph 17.5.3, that the Customer has (if appropriate) paid the Company in full for such equipment and materials. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.