



V I S U A L S O F T <sup>TM</sup>

**TERMS OF BUSINESS**

## ACCEPTANCE OF TERMS

This Agreement constitutes a legally binding agreement between you and us.

This Agreement takes effect when you sign the Project Agreement and return it to us.

We may update these Terms of Business when required, and we will notify you electronically of any changes.

We will supply the Services in accordance with the terms of this Agreement.

Section 1 of this Agreement will apply regardless of the type of Services being supplied.

Section 2 will only apply if, and to the extent that, the Services comprise the development of a website or other Project Productions Services.

Section 3 will only apply if, and to the extent that, the Services comprise Hosting and Support Services.

Section 4 will only apply if, and to the extent that, the Services comprise Online Marketing Services.

We may, from time to time, enter into further agreements with you in connection with this Agreement, the Services or otherwise (for example, a Service Level Agreement).

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## SECTION 1 - GENERAL TERMS

### 1. REFERENCES

- 1.1** Please see clause 22 which tells you the meaning of some of the words we have used in this document (most of the words starting with capital letters are defined).
- 1.2** "Visualsoft", "we", "us" or "our" refers to Visualsoft Limited (company number 03655545), and references to "you" or "your" mean the party identified as the Client in the Project Agreement.
- 1.3** Any words following the terms "including", "include", "in particular", "for example" or any similar expression are illustrative and will not limit the meaning of the words, description, definition, phrase or term preceding those terms.
- 1.4** Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.5** Any obligation on a party not to do something includes an obligation not to allow it to be done.
- 1.6** References to writing or written includes email.
- 1.7** References to "Clauses" are to clauses of this Agreement.

### 2. LENGTH OF THIS AGREEMENT

This Agreement comes into effect on the Commencement Date and lasts until the date the Services are completed in accordance with this Agreement or until it is terminated in accordance with its terms.

### 3. THE BASIS OF THE SERVICES

- 3.1** We are engaged on a non-exclusive basis.
- 3.2** We may be interested or involved in any business in the same, or a similar, field to your business.
- 3.3** Subject to the terms of this Agreement, we will provide the Services and you will pay for them.

### 4. WHAT'S NOT INCLUDED IN THE SERVICE

- 4.1** We are responsible only for the services expressly set out in the Project Agreement.
- 4.2** We take no responsibility, and are not liable, for:
  - 4.2.1** the navigational structure of the Website;
  - 4.2.2** search engine rankings;
  - 4.2.3** the number of people who visit the Website;
  - 4.2.4** the amount of money the Website generates;
  - 4.2.5** making or authorising sales from the Website;
  - 4.2.6** maintaining any product feeds which are included on the Website;
  - 4.2.7** applying for, renewing or paying fees in relation to domain names;
  - 4.2.8** obtaining licences for materials included in the Client Materials;
  - 4.2.9** setting up or maintaining email accounts or email addresses in relation to the Website;
  - 4.2.10** setting up or maintaining URL forwarding or redirect services to the Website;
  - 4.2.11** setting up or maintaining hyperlinks which are contained on the Website and which you are able to edit;
  - 4.2.12** services which you instruct third parties to carry out in relation to the Website, or any fees payable to such third parties;
  - 4.2.13** reviewing your own customer databases, or advising on their compliance with data protection laws or other applicable laws or rules;
  - 4.2.14** setting up or maintaining discount codes;
  - 4.2.15** setting up or maintaining social network pages which relate to the Website but are not part of the Website or referred to in the Project Agreement;

**4.2.16** making design alterations to the Website which do not adhere to the design option set out in the Project Agreement; or

**4.2.17** any mistakes we make in relation to purchasing adverts on your behalf, including setting individual pricing levels, where we ask you to check that a proposed advert purchase is correct and you do not notify us of any mistakes.

**4.3** We are not responsible for ensuring that the Website complies with any laws, regulations, rules or codes with which you and/or the Website are obliged to comply.

**4.4** We will charge extra for any work we do which is not part of the Services ("Additional Work"). We apply a minimum charge of £30 plus VAT for Additional Work.

**4.5** You can ask us to carry out Additional Work by emailing us or by posting a request on our Online Support System. If we believe that the request is critical to your business and/or may benefit other merchants on our platform, we may then provide a quote for carrying out the Additional Work. If you approve our quote we will perform the Additional Work in accordance with this Agreement. If you do not approve the quote we will not be obliged to perform the Additional Work.

**4.6** Additional Work is accepted as follows:

**4.6.1** Step 1 - Once we have completed the Additional Work we will notify you by email.

**4.6.2** Step 2 - You must then check that you are satisfied with the Additional Work. If you are not satisfied with the Additional Work, you must let us know on our Online Support System within 7 days of receipt of the notification email outlined in Step 1 of this clause 4.6.

**4.6.3** Step 3 - You accept the Additional Work when you confirm that you are satisfied with the Additional Work on our Online Support System, or after the expiry of 8 days after receipt of the notification email outlined in Step 1 of this clause 4.6, whichever is earlier.

## 5. OUR STANDARDS

We will use reasonable care and skill when we supply the Services. This includes:

**5.1** working diligently to minimise unwanted delays or problems;

**5.2** notifying you as soon as we can of any significant delays or problems;

**5.3** trying to resolve issues as quickly as possible (within our Support Service Hours) once we are aware of them; and

**5.4** putting measures in place to avoid issues from reoccurring where possible.

## 6. WHEN WE'LL PERFORM THE SERVICES

**6.1** Any dates or times we give you for performance of the Services are only estimates, but we will try to perform the Services by those dates and let you know if we can't.

**6.2** If you have not asked us to perform the Services at a particular time or date we will try to perform the Services as soon as reasonably possible after you have requested those Services.

## 7. SERVICE INTERRUPTION

**7.1** We can interrupt, postpone, delay, limit or curtail the Services where it is reasonable to do so and where:

**7.1.1** we must take action to comply with any applicable law or regulation; and/or

**7.1.2** we need to carry out maintenance, inspection, servicing, repair, renewal or replacement of the Services or the systems or networks used to provide the Services; and/or

**7.1.3** there is an error on the Visualsoft Platform.

**7.2** We will not be liable for any loss, damage, cost or expense that you incur as a result of any interruption, postponement, delay, limit or curtailment of the Services allowed under clause 7.1, and the Charges will not be reduced.

**7.3** We are not obliged to give you advance warning of interruptions referred to in clause 7.1.

## 8. YOUR BEHAVIOUR

### 8.1 You must:

- 8.1.1** report any problems in relation to the Services to us as soon as you identify them;
- 8.1.2** notify us as soon as possible of any circumstances which could prevent or make it difficult for us to provide the Services, providing as much detail as possible;
- 8.1.3** provide us with all information and assistance (including Client Materials) we ask for to provide the Services, including answering our questions promptly and in any event within 30 days of us asking for the information;
- 8.1.4** co-operate with us, and with any competent authorities, when we are performing any right or duty under this Agreement;
- 8.1.5** not access, store, distribute or transmit any material during your use of the Services (including on any Website) that is:
  - (a) unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates or constitutes illegal activity;
  - (c) violates import or export control laws;
  - (d) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability or any other illegal activity; or
  - (e) promotes unlawful violence;
- 8.1.6** not cause damage to any of the systems or networks used by us for or relating to the Services; and
- 8.1.7** use the Hosting and Support Services in accordance with the AUP.

**8.2** We are not responsible for any delay or failure to carry out the Services as a result of your delay or failure to comply with this clause 8 (Your Behaviour).

**8.3** We are not required to provide the Services if you are in breach of this Agreement (but only to the extent and for so long as the breach affects our performance of the Services).

## 9. PAYMENT AND CHARGES

**9.1** The Charges which apply to this Agreement are set out in the Project Agreement. Payment terms in respect of the Charges will be set out in the Project Agreement. Such payment terms may include one-off payments, payment by instalments, commission based payments, deposits or any other payment method.

**9.2** If VAT is payable in relation to an invoice, you must pay the VAT.

**9.3** You may not set off any amount you owe us against anything we owe you.

**9.4** All Charges, including project deposits, are non-refundable, unless stated otherwise in this Agreement.

**9.5** If you do not pay us when you should we can (i) stop providing the Services (and any other services we are providing to you (or for you) whether under this Agreement or otherwise) until you pay any amounts which are overdue and until you pay any interest on such overdue amounts, and (ii) stop you from being able to access the Administration System in relation to the Website until you pay any amounts which are overdue and until you pay any interest on such overdue amounts. In addition, if you do not pay us when you should under any other agreement and/or in respect of any other services (except the Services), we can (i) stop providing the Services until you pay any amounts which are overdue and until you pay any interest on such overdue amounts and (ii) stop you from being able to access the Administration System in relation to the Website until you pay any amounts which are overdue and until you pay any interest on such overdue amounts.

**9.6** Payment must be by one of the methods set out on the invoice unless stated otherwise in this Agreement.

**9.7** Unless otherwise stated in the Project Agreement, on the relevant invoice or agreed by us in writing, you must pay us within 30 days from the date of the invoice. If you are unable to make payment within this time, you must let us know as soon as possible.

- 9.8** You will remain liable to pay the Charges in the event that we fail to meet any estimated deadlines or other timescales.
- 9.9** You are responsible for all bank charges associated with making payment to us, including international bank charges where applicable.
- 9.10** Where we encounter third party costs when carrying out work on your behalf we will pass on these costs to you.
- 9.11** If you do not pay the Charges in line with our payment terms, we may also pursue legal action to recover monies owed - we will notify you prior to legal proceedings.

## 10. YOUR USE OF THE WEBSITE

### 10.1 Grant of licence

**10.1.1** Subject to the terms of this Agreement, we grant you a licence of Intellectual Property Rights owned by us, or a sub-licence of Intellectual Property Rights licensed to us:

- (a) to use the Website, including to have the Compiled Code hosted by a third party on your behalf; and
- (b) to use the Content (other than the Client Materials) in relation to any of your goods or services.

**10.1.2** Use of the Website, or Content, may be subject to terms and conditions imposed by one of our licensors. You must comply with any such terms and conditions that we notify you of and if you do not, certain features of the Website and/or Content might be unavailable or restricted.

**10.1.3** Any licences or sub-licences referred to in clause 10.1.1 above are non-exclusive and perpetual (unless otherwise stated in this Agreement or, in respect of sub-licences only, unless the head licence under which the relevant Intellectual Property Rights are licensed to us expires or is terminated (for any reason) on the happening of which the relevant sub-licence will automatically terminate). They may only be transferred to a third party if:

- (a) where we grant you both a licence and a sub-licence, you transfer both of them;
- (b) you transfer all of your right, title and interest in and to the Website and the Content (other than Client Materials); and
- (c) the person you transfer it to undertakes to us, our licensors, our successors in title and our licensors' successors in title, to comply with your obligations and liabilities set out in this Agreement. We, our successors in title, our licensors and our licensors' successors in title from time to time are entitled to enforce the benefit of the transferee's undertaking under the Contract (Rights of Third Parties) Act 1999, and after any transfer, references in this Agreement to you will be a reference to the transferee.

**10.1.4** If you try to transfer the licence or sub-licence in breach of clause 10.1.3, the transfer will be ineffective and the licence and sub-licence will terminate immediately.

**10.1.5** Where we provide the Compiled Code to you, you may copy the Compiled Code to the extent reasonably necessary for the exploitation of the licence and sub-licence to which clause 10.1.1 refers, including for the purpose of backup and disaster recovery.

**10.1.6** Regardless of the other terms of this Agreement you must acquire at your cost any rights in relation to any other works or materials, including the Client Materials, required to authorise the use or exploitation of each Website or the Content in accordance with this Agreement.

### 10.2 What You Must Not Do

**10.2.1** You must not:

- (a) adapt, translate, arrange, or alter the Website or reverse engineer, decompile or disassemble the Website except to the extent permitted by applicable law;
- (b) cause or permit any Website to be used by, or for the benefit of, any third party;
- (c) dispose of the Website or any copy of the Website made under this Agreement, except where this Agreement allows you to transfer the Website (pursuant to a permitted transfer under clause 10.1 (Grant of licence); or
- (d) use the Website otherwise than in accordance with this Agreement.

**10.2.2** References in clause 10.2.1 includes any attempt to do so, or to cause or permit any third party to do, or to attempt, the act.

### 10.3 What You Must Do

You agree to:

- 10.3.1 display any proprietary notices on the Website that we ask you to include;
- 10.3.2 where we have installed "Site by Visualsoft" on the Website, maintain and not remove such legend or any similar legend;
- 10.3.3 notify us immediately of any use of the Website in breach of this Agreement;
- 10.3.4 use the Website for your own business purposes only;
- 10.3.5 permit use of the Website only by your employees who are suitably qualified and trained in its use;
- 10.3.6 in the course of using the Website and the Services, not infringe the Intellectual Property Rights, or any other rights, of any third party, nor cause nor contribute to us or any of our sub-contractors doing so; and
- 10.3.7 establish and maintain all reasonable technical and organisational measures against:
  - (a) unauthorised or unlawful access to and use of the Website; and
  - (b) accidental loss or destruction of, or damage to, the Website.

### 10.4 Risks Of Using The Website

You assume all risk of loss of, or damage to, software, systems, networks or data, whether owned or used by you or any third party, arising from the deployment or use of the Website and all consequences flowing from that loss or damage, including:

- 10.4.1 for all loss, damage, cost, and expense incurred or sustained by you; and
- 10.4.2 subject to clause 11.2 (Infringement), you are liable for, and agree to pay, all compensation or other amounts claimed by or due to third parties

### 10.5 Our Right To Check

We may audit the use of each Website to assess compliance with this Agreement, which may include taking copies of records for this purpose.

## 11. INTELLECTUAL PROPERTY RIGHTS

### 11.1 Ownership

11.1.1 Except where expressly stated in this Agreement, this Agreement does not grant either party any rights in or to any Intellectual Property Rights owned by or licensed to the other at the Commencement Date.

11.1.2 We retain ownership of all Intellectual Property Rights in the Visualsoft Content.

### 11.2 Infringement

11.2.1 Subject to clause 16 (Our Liability), throughout this Agreement we will (i) defend you against and (ii) make sure you do not suffer any loss as a result of any claim, allegation, action, dispute or proceedings that the Website (excluding the Client Materials) used in accordance with this Agreement infringes the Intellectual Property Rights, other than any patent, of any third party.

11.2.2 If a third party makes any claim or allegation as outlined in clause 11.2.1 above we may do any one of the following:

- (a) get permission from the third party making the claim for you to continue to use the Website in accordance with this Agreement;
- (b) change the Website so that it does not infringe any third party Intellectual Property Rights without reducing its functionality or performance;

11.2.3 If we do not think any of the above options are commercially reasonable we may terminate this Agreement and refund to you any Charges paid. We may reduce the sum we refund to you by an amount which reflects the value you have already obtained from the provision of the Services. This will be a proportional deduction calculated on straight-line depreciation over a five year period.

11.2.4 Where you make any claim under clause 11.2.1 you must:

- (a) give us written notice of the claim as soon as possible;
- (b) not admit liability or make any offer, promise, compromise, settlement or communication with the third party in respect of the claim without our prior written consent. We will not withhold or delay consent unreasonably; and



- (b) not admit liability or make any offer, promise, compromise, settlement or communication with the third party in respect of the claim without our prior written consent. We will not withhold or delay consent unreasonably; and
- (c) allow us or our insurers to conduct any defence, settlement and/or counterclaim in relation to the third party's claim, if we ask you to. We will provide you with security for any reasonable costs, charges and expenses in relation to any such defence, settlement and/or counterclaim. We will keep you informed about how the defence settlement and/or counterclaim progresses.

## 12. CONFIDENTIALITY

- 12.1** We will both need to disclose certain information to each other. This may include Confidential Information. We both agree:
- 12.1.1** to keep it confidential;
  - 12.1.2** not to disclose it without the other's prior written consent, except to employees if they need to know the Confidential Information; and
  - 12.1.3** to use it only in complying with this Agreement.
- 12.2** The clause above will not apply if:
- 12.2.1** the receiving party already had the information (and did not have to treat it as confidential) when it was disclosed under this Agreement;
  - 12.2.2** the information is in the public domain (except if it is only public because of a breach of this Agreement); or
  - 12.2.3** the information is required to be disclosed by law.
- 12.3** These provisions do not restrict us from using techniques, ideas, tools, concepts or know-how involved in developing the Website to develop, use or market websites or software in other projects.
- 12.4** These provisions do not restrict our ability to use your information in accordance with clause 13.5.2 ("Featuring in Marketing Material").
- 12.5** These provisions do not restrict or prevent us from using information we collect and aggregate in relation to the way the Website is used.
- 12.6** You undertake to us to keep the contents of this Agreement, the Project Agreement and any other contract, agreement or understanding between you and Visualsoft confidential and not to disclose this (or any part or detail of it) to any third party unless we expressly permit you to do so in writing. This obligation extends, without limitation, to the price you are liable to pay to Visualsoft for the Services and any other services or products you purchase from Visualsoft.

## 13. DATA USE AND PROTECTION

### 13.1 Use and Storage of Personal Data

- 13.1.1** We process Personal Data as is necessary to provide the Services and as otherwise required by law. You acknowledge and agree that we act as your data processor (as that term is defined in the Data Protection Act 1998) with respect to our processing of the Personal Data in the provision of the Services.
- 13.1.2** The Personal Data (excluding your customers' data and any other information you collect about your customers which is stored on or accessible from the Website) we process will be subject to the following data security measures:
- (a) all usernames and passwords supplied to us are stored as AES-256bit encrypted data in our internal Intranet system; and
  - (b) we maintain an information security policy as part of our commitment to PCI DSS compliance – Payment Card Industry Data Security Standard (PCI DSS) compliance, which is a proprietary information security standard designed to ensure that all companies that process, store or transmit credit card information maintain a secure environment. You can find more information about PCI DSS at [https://www.pcisecuritystandards.org/security\\_standards](https://www.pcisecuritystandards.org/security_standards) (we are PCI Compliant - Level 1), you should assess whether the security measures set out above are sufficient in order to comply with your obligations under Data Protection Legislation.

**13.1.3** We may amend the security measures set out at 13.1.2 from time to time. We will notify you in advance if such amendments will have an adverse material effect on the security of the Personal Data (excluding your customers' data and any other information you collect about your customers which is stored on or accessible from the Website).

**13.1.4** All of our employees are bound to comply with our security measures as part of our employment terms.

**13.1.5** It is your responsibility to ensure that any processing of Personal Data by us in the provision of the Services is carried out in accordance with applicable Data Protection Legislation and particularly that any Online Marketing Services (including the supply by us of any marketing consent language) comply with applicable Data Protection Legislation.

### **13.2 Use of Performance Data**

**13.2.1** The performance data (including sales figures) of every online store we produce is available to some of our employees, however (unless otherwise stated in this Agreement) we will:

- (a) never disclose any of your website's specific performance data with other parties without your prior written agreement; and
- (b) only use your website's performance data anonymously within aggregated statistics for our research and development, demonstrative, sales and/or marketing purposes, and this performance data will not include Personal Data.

**13.2.2** You agree that we are allowed to provide third parties with aggregate information about users of your online store / Website (for example, we may inform them that 500 men aged under 30 have clicked on their advertisement on any given day) and you also agree that we may use such aggregate information to help third parties (for example, advertisers) reach the kind of audience they want to target (for example, women in TS22). For the avoidance of doubt, such information will not include Personal Data.

### **13.3 Storage Of Payment Card Data**

We do not store any card data of any of your customers when inputted on the Website and for PCI DSS compliance (as detailed in clause 13.1.2(b)) you must not enter/store any of your customers' payment card data on the Website other than in predefined boxes where the information is hosted on a PCI compliant third party Website

### **13.4 Password Protection**

Security is a priority for us, which is why we insist that every permitted user of our systems – including store administration systems and our online support system – has and uses individual login details. You agree to protect any username/password details that we give to you and your business, and must not disclose the details to other individuals or third parties. If you would like another user or third party to have access to your online store's administration system, please let us know so we can provide unique login details.

### **13.5 Marketing And Promotion**

#### **13.5.1 Marketing**

We can include any of our trademarks or other marks or signs on the Website, and/or on any Fascias or Newsletters referred to in the Project Agreement and/or in any Additional Work you instruct us to carry out unless otherwise agreed in writing by the parties.

#### **13.5.2 Featuring in Marketing Material**

We can use screenshots from your Website in marketing materials including:

- (a) our company website;
- (b) brochures;
- (c) exhibition graphics;
- (d) press releases and articles; and
- (e) presentations.

## 14. WARRANTIES

### 14.1 Mutual Warranties

We both warrant to each other that we have full right, power and authority to enter into and perform our respective obligations under this Agreement

### 14.2 Your Warranties To Us

You warrant that the Client Materials are:

**14.2.1** accurate and not misleading; and

**14.2.2** do not infringe any third party Intellectual Property Rights.

## 15. CLIENT INDEMNITY

**15.1** You indemnify us against any claim, allegation, action, dispute or proceedings arising from or relating to our use of the Client Materials, or your use of the Website, including for infringement of any Intellectual Property Right of, or any loss or damage to, any third party and including for any breach by you of any data protection laws.

**15.2** Where we claim under this clause 15 (Client Indemnity), we will give you written notice of the claim as soon as possible. We will not admit liability or make any offer, promise, compromise, settlement or communication with the third party in respect of the claim without your prior written consent (which you will not withhold or delay unreasonably).

## 16. OUR LIABILITY

### 16.1 Visualsoft Breach

This clause limits our liability for:

**16.1.1** a breach by us of this Agreement; and

**16.1.2** any other act or failure to act by us which could form the basis of a damages claim by you against us (each of these is a "Visualsoft Breach").

### 16.2 What You Can Do If There Is A Visualsoft Breach

**16.2.1** If there is a Visualsoft Breach in relation to a failure to provide the Services, or defective or delayed provision of the Services, our only responsibility will be to provide the relevant Services again within a reasonable time of you notifying us of the failure, defect or delay.

**16.2.2** If there has been a Visualsoft Breach in relation to any error or insufficiency of the Website (other than the Client Materials), our only responsibility will be to repair or replace the Website (other than the Client Materials). We can decide whether to repair or replace in this situation.

**16.2.3** We will only be required to re-provide, repair or replace as outlined in this clause for as long as you receive the Hosting and Support Services under this Agreement.

### 16.3 What We Are Not Liable For

**16.3.1** We are not liable for the following types of loss:

- (a) loss which you have assumed responsibility for under this Agreement;
- (b) loss of sales;
- (c) loss of earnings;
- (d) loss of opportunity;
- (e) loss of profit;
- (f) loss of reputation;
- (g) loss of business;
- (h) loss of goodwill;
- (i) loss of expected savings;
- (j) loss of or damage to data; and
- (k) consequential or indirect loss.

**16.3.2** We will not be liable for these categories of losses whether or not they are a natural result of the breach or could be (or were) considered or foreseen by either of us.

**16.3.3** We will not be liable for any losses relating to or resulting from any failure by us to meet estimated deadlines. You cannot claim damages if we fail to perform any obligation in this Agreement by any date or time estimate we have provided to you.

**16.3.4** We will not be liable for any losses relating to changes in any third party features

**16.3.5** The only exception to the above is in the case of death, personal injury, fraud or other liability which cannot be excluded or limited by applicable law.

#### **16.4** Financial Limitation

The maximum amount of money we will pay you for any Visualsoft Breach is:

**16.4.1** if it happens before or on Acceptance, the amount of charges you have already paid on the date the Visualsoft Breach happens; and

**16.4.2** if it happens after Acceptance, the amount of Charges you have paid up to Step 4 of the User Acceptance Process outlined in clause 25.

#### **16.5** No Claims

You agree not to bring a claim against any of our individual employees.

## 17. TERMINATION

#### **17.1** Our Right To Terminate

**17.1.1** We may terminate this Agreement for any reason by giving you at least 30 days' written notice.

**17.1.2** We may terminate this Agreement at any time if an Insolvency Event in relation to you happens.

#### **17.2** Termination if you breach this Agreement

**17.2.1** If you have breached this Agreement we may send you a notice:

(a) setting out the breach; and

(b) if the breach can be corrected giving you 30 days to correct it; or

(c) if the breach cannot be corrected informing you that this Agreement is terminated by the notice.

**17.2.2** We can terminate this Agreement at any time if you behave inappropriately to any of our staff, which includes behaving in an aggressive or abusive manner.

**17.2.3** We can terminate this Agreement at any time if you fail to carry out anything we ask you to do in relation to the Services within 30 days of our written request.

#### **17.3** Your Right to Terminate

**17.3.1** Subject to clause 19 (Complaints Procedure), you may terminate this Agreement or any part of the Services by giving us 30 days' written notice.

**17.3.2** You may terminate this Agreement at any time if an Insolvency Event in relation to us happens.

#### **17.4** Termination if we breach this Agreement

If we have breached this Agreement you may send us a notice:

**17.4.1** setting out the breach; and

**17.4.2** if the breach can be corrected giving us 30 days to correct it; or

**17.4.3** if the breach cannot be corrected informing us that this Agreement is terminated by the notice.

#### **17.5** Site Shutdown Order

We can shut down the Website if required to do so under any applicable law, other governmental regulation, regulatory request or order of any regulatory body or official or if we believe that hosting the Website would cause damage to our reputation.

## 18. WHAT HAPPENS ON TERMINATION

**18.1** The termination of this Agreement does not affect:

**18.1.1** any rights or liabilities either party has accumulated before termination; or

**18.1.2** General, Limitation of Liability, Client Indemnity, Confidentiality, Consequences of Termination, Data Protection, Engaging Staff, Governing Law, Insurance, Infringement, Intellectual Property, Termination, The Meaning of Words and Phrases and Warranties which will continue to apply after the termination of this Agreement.

**18.2** If you or we terminate this Agreement, you will remain liable for the payment of Charges for any Services we have performed up to the date termination takes effect. This will include any reasonable charges in relation to costs we have incurred in anticipation of performing any Services in the future.

**18.3** If we are not engaged to host the Website or you terminate any Hosting and Support Services under clause 17 (Termination) then:

**18.3.1** we will supply you with the Compiled Code if you request it for the purpose of hosting, maintenance and support (all or any of those services being "Support") by you or your service provider but only after you have paid any applicable charges;

**18.3.2** we will not be required to provide the Hosting and Support Services; and

**18.3.3** we will not be liable for any error or insufficiency in any Website that happens as a result of the operation of the Website or of any Support and if we investigate any problem in the Website which is found to result from its operation or Support we will be entitled to charge you a reasonable sum to investigate it.

## 19. COMPLAINTS PROCEDURE

Where you have a complaint in relation to the Services you must follow our Complaints Procedure before you are entitled to terminate under the terms of this Agreement. The Complaints Procedure is at <http://www.visualsoft.co.uk/complaints>.

## 20. ENGAGING/EMPLOYING STAFF

During this agreement, and for a period of 6 months after termination or expiry of this Agreement, you will not approach, engage for freelance work or employ any of our Staff in relation to the Services.

## 21. GENERAL

**21.1** Events Outside The Control Of The Parties:

**21.1.1** This clause applies where any event outside our reasonable control (including acts of God, war, terrorism, fire, natural disasters and industrial action of our staff) (referred to in this Agreement as an "Event") prevents us performing the Services or providing the Goods, delays our performance of the Services or provision of the Goods, or makes it difficult for us to perform the Services.

**21.1.2** Our obligations under this Agreement will be suspended for as long as the Event continues and the extent of the suspension will depend on the extent to which we are prevented, delayed or face difficulty.

**21.1.3** As soon as we reasonably can after the Event starts, we will let you know when the Event happened and how it will affect what we can do under this Agreement. We will also:

(a) try to reduce the effect of the Event on what we can do under this Agreement; and

(b) as soon as possible after the Event stops:

(i) let you know that the Event has stopped;

(ii) start supplying you again; and

(iii) do everything we reasonably can to recover lost time.

## **21.2 Rights Of Third Parties**

Unless we have clearly said so in this Agreement, this Agreement is not enforceable by anyone except you and us.

## **21.3 Complete Agreement and Amendments**

**21.3.1** This Agreement replaces all previous representations, agreements, negotiations and understandings between you and us in relation to its subject matter.

**21.3.2** Clause 16 (Our Liability) does not affect the liability of either of us for saying anything fraudulent.

**21.3.3** We both agree that we have not relied on anything not contained in this Agreement when deciding to make this Agreement.

## **21.4 Remedies General**

**21.4.1** We are entitled to exercise any and all of our rights under this Agreement and these rights do not affect each other or any other rights we have under the law.

**21.4.2** Your rights under this Agreement are your only rights in relation to the Services and any terms implied by law are excluded (to the extent that we are allowed to exclude them).

## **21.5 Notices**

**21.5.1** Notices under this Agreement must be in writing and must either be delivered by hand, sent by first class pre-paid post (or in the case of overseas post, by airmail), by fax or by email. Delivery by courier will be regarded as delivery by hand.

**21.5.2** Notices must be sent to the address or email address of the relevant party referred to in the Project Agreement.

## **21.6 Waiver**

**21.6.1** Any failure by us to enforce our rights under this Agreement will not affect our other rights under this Agreement and it does not affect our ability to exercise any rights in future.

**21.6.2** If any part of this Agreement is illegal, invalid or unenforceable that part will be deleted and the rest of this Agreement will continue.

## **21.7 Assignment**

**21.7.1** You will not transfer your rights under this Agreement to any third party without our prior written permission.

**21.7.2** If we do agree that you may transfer your rights under this Agreement, we may charge you a fee for the transfer.

**21.7.3** We may transfer any of our rights under this Agreement to any third party

## **21.8 Conflict**

If there is inconsistency between any of the provisions of this Agreement and the provisions of the Project Agreement, the provisions of the Project Agreement shall prevail.

## **21.9 No Partnership**

This Agreement does not create a partnership between us.

## **21.10 Governing Law**

English law is the law which applies to this Agreement.

## **21.11 Jurisdiction**

The courts of England and Wales may consider disputes arising under or in relation to this Agreement.

## 22. THE MEANINGS OF WORDS AND PHRASES

“Acceptance”	has the meaning given in clauses 4.6 and 25.4.2;
“Additional Work”	has the meaning given in clause 4.4;
“Administration System”	the online interface that Visualsoft will provide access to, and use of, to enable you to manage your online store and Website.
“AUP”	the acceptable use policy (if any) provided to you by us in respect of the Hosting and Support Services, as updated from time to time;
“Business Day”	Monday to Friday, excluding public and bank holidays in the United Kingdom;
“Charges”	the charges payable by you under this Agreement as set out in the Project Agreement;
“Client Materials”	any text, images, designs or sounds in any format to be provided or (as the case may be) provided to us by you for use in the development of, or incorporation into, the Website;
“Commencement Date”	the date specified as such in the Project Agreement;
“Compiled Code”	in relation to the Website, the computer readable form of the Website, which does not include any source code, but which allows the Website to be hosted independently of us;
“Complaints Procedure”	has the meaning given in clause 19;
“Confidential Information”	in relation to a party, the terms of this Agreement, and all other information and trade secrets relating to that party’s business or customers which come into the possession of the other party pursuant to this Agreement, whether orally, or in documentary electronic or other form, including all (if any) information held by the other as of the Commencement Date;
“Content”	the text, images, designs and sounds to be contained on and presented to users of the Website specified in the Project Agreement or otherwise agreed between the parties;
“Data Protection Legislation”	the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all other applicable laws from time to time in force which relate to data protection, privacy or the processing of Personal Data;

“Event”	has the meaning given in clause 21.1 (“Events Outside the Control of the Parties”);
“General Terms”	the terms set out in Section 1;
“Hosting and Support Services”	the services specified as such and described in the Project Agreement (where applicable);
“Hosting and Support Terms”	the terms set out in Section 3;
“Insolvency Event”	<p>each and any of the following in relation to either party:</p> <p>a) any action (corporate or otherwise), legal proceedings or other procedure or step being taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of either party (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of either party or any of either party’s assets; (iii) the enforcement of any security over any assets of either party; or (iv) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of either party;</p> <p>b) either party being unable to pay its debts as they fall due or being insolvent; and</p> <p>c) either party entering into a composition or arrangement with its creditors or any class of them;</p>
“Intellectual Property (Rights)”	any and all patents, trademarks, trade names, service marks, copyright, database rights, rights in design, rights in inventions, registered designs, trade, brand and business names, and any and all other intellectual property rights, whether or not registered or capable of registration and whether subsisting or anywhere in the world; all applications and rights to apply for any of the rights identified in this clause together with all or any goodwill relating to the same;



“Live Date”	the date referred to in clause 25.5.1;
“Online Marketing Services”	the services specified as such and described in the Project Agreement (where applicable);
“Online Marketing Service Terms”	the terms set out in Section 4;
“Online Support System ”	an online support system accessible at <a href="http://support.visualsoft.co.uk">support.visualsoft.co.uk</a> ;
“Personal Data”	any personal data (as that term is defined in the Data Protection Act 1998) that is provided by you to us in connection with this Agreement or is otherwise processed by us on your behalf in connection with the provision of the Services, including personal data;
“Project Agreement”	an agreement in writing sent by us to you and accepted by you in respect of the supply of the Website or Websites and Services, and signed by both parties;
“Project Coordinator”	means the member of staff at Visualsoft responsible for coordinating the build of the Website;
“Project Production Services”	the services specified as such and described in the Project Agreement (where applicable);
“Project Production Terms”	the terms set out in Section 2;
“Project Software”	any software designed and developed by us as a result of any Project Production Services;
“Services”	the services identified in the Project Agreement;
“Support”	has the meaning given in clause 18.3.1;
“Support Service Hours”	has the meaning given in clause 31.1;
“User Acceptance Form”	the form described in clause 25.1;

“Visualsoft Content”	any and all materials, technical know-how and information of Visualsoft which is not produced solely for the purpose of the Website;
“Visualsoft Breach”	has the meaning given in clause 16.1;
“Visualsoft Platform”	the platform on which Visualsoft builds the Website;
“Visualsoft Software”	software owned by or licensed to us at the date of this Agreement; and
“Website”	the website to which the Project Agreement refers, to be developed by us and provided to you in accordance with this Agreement.

## SECTION 2: PROJECT PRODUCTION TERMS

### 23. SCOPE OF PROJECT PRODUCTION

#### 23.1 Elements of the Website

**23.1.1** Unless the Project Agreement provides otherwise, each Website will be made up of the following elements:

- (a) Visualsoft Software;
- (b) Project Software; and
- (c) Content.

**23.1.2** Where appropriate you must obtain and provide us with the Client Materials. Where appropriate you must also grant us, or arrange for another person to grant to us, all rights and licences in relation to the Client Materials that are necessary for us to perform our obligations under this Agreement.

### 24. ACCESS RESTRICTIONS

We will not grant you, or any third party, FTP access to the Visualsoft Platform.

### 25. USER ACCEPTANCE PROCESS

#### 25.1 Step 1

Once we have designed and built your Website or any additional development work or other services in relation thereto, you will be able to access the User Acceptance Form through your project panel.

#### 25.2 Step 2

You must complete the actions detailed in the User Acceptance Form, which include:

**25.2.1** checking the Website and its contents (or any development work or other services undertaken); and

**25.2.2** testing the Website's functionality (or that of any development work or other services undertaken).

#### 25.3 Step 3

If you are not satisfied with the Website, its contents and its functionality (or that of any development work or other services undertaken) you must let your Project Coordinator know by logging a issue within 7 days of receiving it. You need to provide sufficient detail of any issues to allow us to address them.

#### 25.4 Step 4

**25.4.1** If you are satisfied with the Website, its contents and its functionality (or that of any development work or other services undertaken) you must sign the User Acceptance Form electronically by following the link outlined at Step 1 of this clause 25.

**25.4.2** You accept the Website (or any development work or other services undertaken) when you sign the User Acceptance Form referred to as "Accept", "Accepted" or "Acceptance" in this Agreement.

#### 25.5 Step 5

**25.5.1** We may launch your Website (or any development work or other services undertaken) after Acceptance.

**25.5.2** Upon the completion of the project you will receive an invoice for your final payment.

## 26. ADDITIONAL WORK CHARGES

If you request Additional Work we will invoice you separately for the extra work and you must pay for the Additional Work before we provide it. You are liable for any administrative charges incurred in providing such extra services, even if you ask us not to finish the Additional Work. Such Additional Work will be subject to the same User Acceptance Process as set out in clause 25.

## 27. PROVISION OF EXTERNAL ARTWORK

If you provide us with artwork to be incorporated into the design of your Website, this will not decrease the Charges.

## 28. PAUSING PROJECT PRODUCTION

You can ask us to pause Project Production for up to 28 days throughout the project lifetime. We will notify you in writing if we agree to this. If you do not agree to resume Product Production after 28 days from our agreement to pause Product Production, you will be liable for any extra charges in addition to the Charges which result from the pause.

## 29. CANCELLING A PROJECT

**29.1** If you choose to cancel a project, you must let us know in writing.

**29.2** If we're unable to speak with you directly for a period of 21 days or more, and we have not agreed to pause production, we will automatically cancel the project.

**29.3** We will not refund any of the Charges made prior to cancellation.

## SECTION 3 - HOSTING AND SUPPORT SERVICES TERMS

### 29. SCOPE OF HOSTING AND SUPPORT SERVICES

**29.1** Unless the Project Agreement states otherwise, we will provide the Hosting and Support Services from the Live Date.

**29.2** We will not be obliged to provide the Hosting and Support Services until you have paid the Charges in accordance with clause 33 (Payment and Charges for Hosting and Support).

**29.3** We may sub-contract the provision of the Hosting and Support Services to any third party.

**29.4** We will not be liable for any failure to provide, or for any defective or delayed provision of, the Hosting and Support Services by any sub-contractor.

**29.5** Where a sub-contract expires or is terminated by the subcontractor, we will use reasonable endeavours to replace the Hosting and Support Services.

**29.6** If a sub-contractor of ours terminates or is in breach of a sub-contract, we will use reasonable endeavours to replace the Hosting and Support Services.

**29.7** We will not be liable for any error or problem with the Website that has happened as a result of the operation, hosting, maintenance or support of the Website by anyone except us or our subcontractors. If we investigate an error or problem which did happen as a result of anyone other than us or our subcontractors' actions, we can charge you an additional, reasonable sum for the investigation. For further details on Visualsoft's liability, please see term 16. Our Liability.

**29.8** You will not have direct access to the server on which the Website is hosted and will only be allowed to administer the Website through controlled administration screens provided by us.

### 30. YOUR BEHAVIOUR

You must use the Hosting and Support Services in accordance with the AUP

### 31. HOW WE WILL PROVIDE THE SUPPORT AND HOSTING AND SUPPORT SERVICES

#### **31.1** Support Service Hours

The Support Services operate between 8am-8pm on from Monday-Friday, 9am-5pm on Saturdays, and 10am-4pm on Sundays, excluding public holidays in the United Kingdom. We reserve the right to change the days and/or times on which the Support Services operate by giving to you 5 days written notice to that effect.

#### **31.2** Service Interruption

The Hosting and Support Services may be suspended without notice (if giving notice is not reasonably practicable), where:

**31.2.1** the Hosting and Support Services or the Website are being used in breach of this Agreement;

**31.2.2** you do not co-operate with us or our sub-contractor's investigation of any suspected violation of the AUP or breach of this Agreement;

**31.2.3** we or our sub-contractor reasonably believes that the suspension of the Hosting and Support Services is necessary to protect you, our or the subcontractors' systems or networks or other clients of ours; or

**31.2.4** suspension is required by applicable law or is compelled by a competent authority.

### 32. DEVELOPMENT REQUESTS

You can ask us to carry out Additional Work. We are not obliged to agree. In particular, if we believe that the work you request will:

**32.1** not be compatible with existing features;

**32.2** be included as part of future planned developments to our core platform;

**32.3** will not be possible to support longer term; and/or

**32.4** has no commercial merit, we will not agree to provide Additional Work

### 33. ADDITIONAL WORK SPECIFICATION

Where we do agree to carry out chargeable Additional Work, the work will be completed to a specification that's agreed prior to commencement - any changes/additions required outside of the specification may incur further charges and in some cases, may not be feasible or possible and will therefore be declined. Additional Work that is not chargeable will be carried out to a standard that we deem acceptable, and is not subject to User Acceptance.

### 34. USER ACCEPTANCE OF ADDITIONAL WORK

On completion of chargeable Additional Work, you must let us know within three working days, in writing, if you believe that the work has not been completed to the agreed specification - no response from you within three working days will be deemed as user acceptance.

### 35. PAYMENT AND CHARGES FOR HOSTING AND SUPPORT

We will charge you for any administration fees we incur as a result of any Direct Debit payments from you which are rejected or cancelled.

### 36. PAYMENT FAILURE PROCESS

If you do not pay the Charges, the following process will apply:

- 34.1** 5 days after payment is due we will notify you that access to the Website will be blocked in a further 5 days if you do not pay the Charges within those further 5 days. The date of this notification is "Step 1";
- 34.2** if payment remains outstanding after 5 days of Step 1 we will interrupt the Services ("Step 2"); and
- 34.3** if payment is not made 5 days after Step 2 we will stop providing the Services. If you pay the Charges subsequently we may re-commence the Services if we choose to do so. If we do re-commence the Services we may charge you an additional fee for the time we have spent re-commencing the Services.
- 34.4** In addition, we may also pursue legal action to recover monies owed - we will notify you prior to legal proceedings.

## SECTION 4 - ONLINE MARKETING SERVICE TERMS

### 37. CLIENT OBLIGATIONS AND RESPONSIBILITIES

You are responsible for paying for any third party services that are included on the Website unless otherwise stated in writing.

### 38. PAYMENT FAILURE PROCESS

If you do not pay the Charges, in addition to ceasing service provision and pursuing legal action to recover monies owed, the following process will also apply if you have an online store that we host and support:

**36.1** 5 days after payment is due we will notify you that access to the Website will be blocked in a further 5 days if you do not pay the Charges within those further 5 days. The date of this notification is "Step 1";

**36.2** if payment remains outstanding after 5 days of Step 1 of this clause 36 we will interrupt the Services ("Step 2"); and

**36.3** if payment is not made 5 days after Step 2 of this clause 36 we will stop providing the Services. If you pay the Charges subsequently we may re-commence the Services if we choose to do so. If we do re-commence the Services we may charge you an additional fee for the time we have spent re-commencing the Services.

### 39. OUTSTANDING PAYMENTS

You will be invoiced for all outstanding payments and must settle these amounts by the due date specified on the invoice(s). Failure to do so could result in Visualsoft pursuing legal action to recover monies owed.