



Terms of Business

Version 2 - Last updated 18th Oct 2019



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 and will take precedence over any inconsistent term contained in Section 1 of this Agreement in relation to those services.

Section 3 will only apply if, and to the extent that, the Services comprise Hosting and Support Services and will take precedence over any inconsistent term contained in Section 1 of this Agreement in relation to those services.

Section 4 will only apply if, and to the extent that, the Services comprise Online Marketing Services and will take precedence over any inconsistent term contained in Section 1 of this Agreement in relation to those services.

Section 5 will only apply if, and to the extent that, the Services comprise Online Marketing Affiliate Network Services and will take precedence over any inconsistent term contained in Section 1 of this Agreement in relation to those 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).

The contract between you and us consists of the following documents:

1. The Project Agreement;
2. The Service Level Agreement (if any);
3. This Agreement; and
4. The Proposal Document (as defined in the Project Agreement) (if any).



If there is any conflict or ambiguity between any of the documents listed above that form the contract between you and us, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.



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.
- 1.8 References to the "Parties" are to the parties to this Agreement.

2. Length Of This Agreement

- 2.1 Subject to clause 2.2 and anything to the contrary set out in the Project Agreement:
 - 2.1.1 this Agreement comes into effect on the Commencement Date; and
 - 2.1.2 Unless terminated earlier in accordance with this Agreement, this Agreement shall continue for 24 months ("Initial Term") and shall automatically extend for a further 24 months ("Extended Term") at the end of the Initial Term and at the end of each Extended Term. Either us or you may give written notice to the other, not later than two months before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 2.2 Notwithstanding clause 2.1 above, and unless anything to the contrary is set out in the Project Agreement, if you wish to terminate this Agreement within the Initial Term or any Extended Term, you must give us 30 days' written notice to do so and you agree that upon such termination you will pay to us:
 - 2.2.1 any Charges (exclusive of VAT which is paid in addition) that, but for such termination, would have been paid to us for the entire Initial Term or relevant Extended Term (as applicable); and



2.2.2 to the extent not already paid pursuant to clause 2.2.1 above and if applicable, the Minimum Amount (exclusive of VAT which is paid in addition) for each month remaining in the Initial Term or relevant Extended Term (as applicable) had this Agreement not been terminated. You agree that the payments to be made in accordance with this clause 2.2 are reasonable and proportionate to reflect the services performed by us in order to implement this Agreement. For the avoidance of doubt, any part months remaining in the Initial Term or relevant Extended Term will attract a pro-rata amount of the Charges and/or Minimum Amount (in accordance with this clause 2.2) for the purposes of calculating the sums due by you to us. This clause 2.2 shall survive termination of this Agreement.

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 Services

4.1 We are responsible only for the services expressly set out in the Project Agreement and no other services.

4.2 In particular, 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 by you as follows:

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

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 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, and so long as you are, in breach of this Agreement.

9. Payment and Charges

9.1 The Charges (or the method of calculating 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.

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 and you shall pay such costs to us (or directly to the relevant third party if we require).

9.11 We may, in our absolute and sole discretion, change (including increase) the Charges or the method of calculating the Charges once in each 12-month period during the term of this Agreement (commencing on the Commencement Date) in line with the percentage increase in the Retail Prices Index and/or any increase in our underlying costs and expenses in delivering the Services to you. We will provide you with at least 14 days' prior written notice of any such increase and the increase will take effect on expiry of that notice.

9.12 We may, in our absolute and sole discretion, change (including increase) the Charges (including the Minimum Amount), the method of calculating the Charges (or the Minimum Amount) and/or any of the payment terms as set out in this Agreement, the Project Agreement or otherwise at any time and for any or no reason at all by giving you at least one months' written notice of any such changes ("Price Increase Notice"). Following receipt of a Price Increase Notice, if you do not want to continue to receive the Services on the changed terms as set out in the Price Increase Notice, you may serve us notice within the period of the Price Increase Notice to terminate this Agreement immediately and, if you do, this Agreement shall terminate automatically on receipt of such notice by us ("Price Increase Termination Notice"). If you do not serve a Price Increase Termination Notice on us in accordance with this clause 9.12, the changes set out in the Price Increase Notice will take effect either on the date specified in the Price Increase Notice or, if not so specified, immediately on expiry of the notice period of the Price Increase Notice.

9.13 We may, in our absolute and sole discretion, change (including increase) the Charges (including the Minimum Amount), the method of calculating the Charges (or the Minimum Amount) and/or any of the payment terms set out in this Agreement, the Project Agreement or otherwise for each Extended Term. We will provide you with written notice of any such changes at least one month prior to commencement of the relevant Extended Term within which the change is to take effect ("Change Notice"). Following receipt of a Change Notice, you may serve written notice on us within the period of the Change Notice to terminate this Agreement at the end of the current Initial Term or Extended Term (as the case may be) ("Termination Notice"). For the avoidance of any doubt, if you do not serve a Termination Notice on us in accordance with this clause 9.13, the changes set out in the relevant Change Notice will take effect from commencement of the relevant Extended Term which the Change Notice referred to.

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 At all times we retain ownership of all Intellectual Property Rights in the Website, the Content (other than the Client Materials), the Visualsoft Content, the Visualsoft Software and the Visualsoft Platform.

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
- (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.employee

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 13.6.2 ("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 Data Protection

13.1.1 The Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

13.1.2 We both acknowledge that for the purposes of the Data Protection Legislation, you are the data controller and we are the data processor (where "data controller" and "data processor" have the meanings as defined in the Data Protection Legislation).

13.1.3 Without prejudice to the generality of clause 13.1.1, you will ensure that you have all necessary appropriate consents and notices in place to enable the lawful



transfer to us of the personal data (as defined in the Data Protection Legislation, “Personal Data”) you ask us to process for the duration and purposes of this agreement.

13.1.4 Without prejudice to the generality of clause 13.1.1, we shall, in relation to any Personal Data processed in connection with the performance by us of our obligations under this Agreement:

(a) process that Personal Data only on your written instructions unless we are required by the laws of any member of the European Union or by the laws of the European Union applicable to us to process Personal Data (“Applicable Laws”). Where we are relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;

(b) ensure that we have in place appropriate technical and organisational measures, reviewed and approved by you, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the European Economic Area unless your prior written consent has been obtained and the following conditions are fulfilled:

(i) either of us have provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;



(iii) we comply with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) we comply with reasonable instructions notified to us in advance by you with respect to the processing of the Personal Data;

(e) assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify you without undue delay on becoming aware of a Personal Data breach;

(g) at your written direction, delete or return Personal Data and copies thereof to you on termination of this Agreement unless required by Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13.1.

13.1.5 You consent to us appointing as a third-party processor of Personal Data under this Agreement any parties referenced in this Agreement, the Project Agreement, any document referred to in either of the aforementioned or any party that we shall notify to you in writing from time to time. We confirm that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this clause 13. As between us, we shall remain fully liable for all acts or omissions of any third-party processor appointed by us pursuant to this clause 13.1.

13.1.6 We may, at any time on not less than 30 days' notice, revise this clause 13.1 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

13.2 Use and Storage of Personal Data

13.2.1 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 (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.

13.2.2 We may amend the security measures set out at 13.2.1 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).

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

13.2.4 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.

13.3 Use of Performance Data

13.3.1 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.

13.3.2 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.

13.4 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 13.2.1(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.

13.5 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.

13.6 Marketing And Promotion

13.6.1 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.

13.6.2 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 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, without limitation, 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 Legislation.

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 or other 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 this clause 16 is in the case of death, personal injury, fraud or other liability which cannot be excluded or limited by applicable law.



16.4 Financial LimitationThe maximum amount of money we will pay you for or in respect of any Visualsoft Breach is the amount of Charges you have actually paid to us in the 12-month period prior to the date on which the Visualsoft Breach happens.

16.5 No ClaimsYou 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 You may terminate this Agreement at any time if an Insolvency Event in relation to us happens.

17.4 Termination if we breach this AgreementIf we have materially breached this Agreement you may send us a notice:

17.4.1 setting out the material breach; and

17.4.2 if the breach can be corrected giving us 30 days to correct it (and if we do not correct the breach within that 30-day period you can terminate this Agreement immediately); or

17.4.3 if the breach cannot be corrected informing us that this Agreement is terminated immediately.

17.5 Site Shutdown OrderWe 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.

17.6 The termination rights set out in this clause 17 are without prejudice to the rights of termination set out in clause 2.



18. What Happens On Termination

18.1 The termination or expiry of this Agreement does not affect:

18.1.1 any rights or liabilities either party has accumulated before termination or any clauses that, expressly or impliedly, continue or come into force and effect on 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 us any applicable charges and fees associated with such;

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.

18.4 Following termination or expiry of this Agreement, we reserve the right to continue to supply the Services (or any part thereof) to you until such time as you expressly and explicitly, in writing, inform us to cease supplying the relevant Services. In the event that, following termination or expiry of this Agreement, you continue to receive the Services (or any part thereof) or any other services from us the Charges you will be liable to pay us for such Services will be calculated in accordance with our tariff rates as varied and notified to you from time to time and will be paid for monthly.

18.5 Following termination of this Agreement by you pursuant to clause 17.3.1, we will use our reasonable endeavours (so far as we are legally able to do so) to liaise with relevant third parties to ensure that the Website remains live (at your sole cost).



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

20.1 You shall not, and shall procure that no person or entity connected with you (including, without limitation, any holding company or subsidiary or other group company of you) shall, without our prior written consent, at any time from the Commencement Date to the date that is 12 months after the termination or expiry of this agreement, solicit or entice away from us or employ or engage or attempt to employ or engage any person who is, or has been, engaged as an employee, worker or consultant, of ours in connection with the Services or this Agreement.

20.2 Any consent given by us in accordance with clause 20.1 (to be given in our absolute and sole discretion) shall be subject to you paying to us a sum equivalent to 100% of the then current annual remuneration of the relevant employee, worker or consultant or, if higher, 100% of the annual remuneration to be paid by you, or the person or entity connected with you, to that employee, worker or consultant ("Relevant Sum").

20.3 In the event of a breach of the restriction contained in clause 20.1 by you, you shall pay to us the Relevant Sum by way of liquidated damages on demand.

20.4 We both confirm and acknowledge that the liquidated damages set out in clause 20.3 are reasonable and proportionate to protect Visualsoft's legitimate business interests.

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 an inconsistency between any of the provisions of this Agreement and the provisions of the Project Agreement, the provisions of this 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

21.12 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this clause we both shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

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 or, if no such date is specified, the date the Project Agreement is signed by you;
“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 2018 and (unless and until the GDPR is no longer directly applicable in the UK), GDPR and then (ii) the Data Protection Act 2018 and any successor legislation to the GDPR or the Data Protection Act 1998;
"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;
"GDPR"	the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time;
"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"	each and any of the following in relation to either party: 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;
	b) either party being unable to pay its debts as they fall due or being insolvent; and
	c) either party entering into a composition or arrangement with its creditors or any class of them;
"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 an 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;
"Minimum Amount"	has the meaning set out in the Project Agreement being the agreed minimum amount of Charges payable by you to us for the Services.
"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 support.visualsoft.co.uk ;
"Personal Data"	any personal data 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 or as



	otherwise agreed from time to time between you and us in writing;
“Support”	has the meaning given in clause 18.3.1;
“Support Service Hours”	has the meaning given in clause 32.1;
“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 (if applicable).



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 an issue within 7 days of receiving it. You need to provide sufficient details 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 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.

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



Section 3 - Hosting and Support Services Terms

30. Scope of Hosting and Support Services

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

30.2 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).

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

30.4 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.

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

30.6 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.

30.7 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.

30.8 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.

31. Your Behaviour

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

32. How We Will Provide the Support and Hosting and Support Services

32.1 Support Service Hours The Support Services operate from 9am-5pm, Monday-Friday, 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.

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



32.2.1 the Hosting and Support Services or the Website are being used in breach of this Agreement

32.2.2 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;

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

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

33. 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:

33.1 not be compatible with existing features;

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

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

33.4 has no commercial merit, we will not agree to provide Additional Work.

34. 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.

35. Payment Failure Process

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

35.1 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";

35.2 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.

35.3 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

36. 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.

37. 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:

37.1 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";

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

37.3 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.

38. 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.



Section 5 - Online Marketing Affiliate Network Terms

39. Applicability

This Section 5 will only apply if, and to the extent that, the Services comprise Online Marketing Affiliate Network Services (as identified in the Project Agreement) and will take precedence over any inconsistent term contained in Section 1 of this Agreement in relation to those services).

40. The Meaning of Words and Phrases

The following words and phrases will have the following meanings in this Section 5:

"Affiliate", "Publisher", "Partner"	The person, firm, company or other entity (whether or not having separate legal personality) which takes part as a registered affiliate of the affiliate network.
"Commission Fee"	The cash payment which the Participating Publisher will receive from the Client in respect of any Validated Transactions after the 'Force Approval Period' expires. The value of the transaction used to calculate the Commission Fee usually (but not exclusively) does not include VAT or delivery costs.
"Network Fee"	The fee payable by the Client to Visualsoft for usage of the affiliate network as outlined in the Project Agreement.
"Override Fee"	A percentage of the Commission Fee which Visualsoft charges the Client in addition to the Commission Fee paid to the Affiliate, the percentage of which is outlined in the Project Agreement.
"Tracking Link"	A unique HTTP request specific to a Participating Publisher which allows a user to be tracked and redirected to the relevant page on the Website(s).
"Affiliate Network or affiliate network"	The system/software provided by Visualsoft which enables the Client to manage various aspects of their affiliate marketing, including payments and Participating Publishers.
"Term"	The full period of this Agreement, commencing on the Commencement Date.
"Participating Publisher"	Those Affiliates which been approved onto the affiliate account by either the Client or Visualsoft, if Visualsoft are managing the Client's affiliate services.



"Force Approval Period"	The period during which the status of transactions can be altered to rejected, preventing commission from being paid against that transaction. If the force approval period expires and a transaction is not rejected, it will be automatically approved and invoiced at which point it cannot be altered or cancelled under any circumstances and the amount will be collected from the Client and paid to the Affiliate.
"Reintegration Charge"	The charge to complete the setup of the account again if the retailer has previously closed their program or otherwise ceased using the Visualsoft affiliate network. This fee is equal to the original setup fee stated in the proposal document.
"Tracking System", "Tracking Pixel"	The proprietary software code for the tracking of, amongst other things, transactions and reporting data.
"Transaction(s) or transaction(s)"	The purchase of any products and/or services offered for sale on the Website(s).
"Validated Transaction"	(i) A transaction manually approved by the Client; or (ii) A transaction which was not rejected before the Force Approval Period expired and thus was automatically marked as approved.
"META Parameter"	A piece of information/data sent from the Website(s) to the affiliate network via the Tracking Pixel.
"Client Materials"	Means the trademarks and any documents, information and/or materials provided by or on behalf of the Client to Visualsoft and/or a Participating Publisher to enable the Client to take part in the affiliate network and for Visualsoft to provide its services.
"Website(s)"	The website(s) owned or operated by the Client.
"Account or account", "Programme or programme"	An account within the affiliate network specifically created for the purposes of working with Publishers, making and tracking payments and otherwise participating in affiliate marketing.

41. Application of Terms

In the event that a conflict occurs between the terms and conditions set out in this Section 5 and any other terms and conditions within this document then for the purposes of resolving such a conflict the terms and conditions set out in this Section 5 will apply instead of the terms and conditions specifically in conflict, any other terms and conditions not in conflict are still applicable.



42. Visualsoft Obligations

42.1 During the Term, Visualsoft shall:

42.1.1 Enable the Client to participate on the affiliate network by granting the Client access (or a duly authorised person) to the affiliate network software, including the usage of tracking code.

42.1.2 Select and make available to the Client a list of Publishers which it regards as being likely to be suitable Participating Publishers (to be determined in Visualsoft's sole and absolute discretion acting reasonably).

42.1.3 Use reasonable endeavours to ensure the Participating Publishers revise or remove any Client Materials and Tracking Links as soon as reasonably practicable following the written request of the Client.

42.2 Visualsoft shall use all reasonable endeavours to meet any dates and deadlines specified to the Client, but any such dates shall be estimates only.

42.3 Visualsoft shall have the right to make any changes to the affiliate network, account management service, Tracking System (including tracking code) and/or the services which are necessary to comply with any applicable law or safety requirements and Visualsoft shall notify the Client in any such event.

43. Client Obligations

43.1 The Client shall provide Visualsoft with the following, within 10 days of the Commencement Date in order to ensure a timely launch of the account, failure to provide all of the required materials may result in delays launching the account which could ultimately lead to lost revenue or invalid forecasts:

43.1.1 Properly integrate the Tracking System into the Websites including the required META Parameters and any additional META Parameters which Visualsoft advise you may need in order to achieve the level of integration required.

43.1.2 Confirm the initial commission fees that the account will go live with.

43.1.3 Provide a working product feed for each currency/country you wish to target.

43.1.4 Provide a full set of image-based creative, such as advertising banners.

43.2 The Client will also ensure that they continually:

43.2.1 Obtain all necessary licenses, permissions and consents which may be required to utilise any and all aspects of the affiliate account, including permission from relevant third-parties.

43.2.2 Provide a timely response to Visualsoft on various matters; including new publishers, Participating Publishers, seasonal strategy, commission changes and other key tasks for growing and maintaining the account.

43.2.3 Promptly notify Visualsoft of any complaints from their customers regarding a Participating Publisher.



43.2.4 Ensure they manually check each and every transaction tracked into the affiliate network and where necessary alter the validation status to “rejected” to ensure a commission is not paid when the Force Approval Period expires (see “Validated Transaction”). Failure to do so may result in commission being charged which cannot then be altered or reclaimed. Clients using our API to automatically assist in this process should still manually check transactions before they are added to invoicing as a final check and to ensure any automation is functioning as it should. This is the Client's sole responsibility and Visualsoft is not responsible for any commissions paid due to a transaction being validated incorrectly.

43.2.5 Ensure that all data you provide Visualsoft is complete, accurate and not misleading.

43.2.6 Provide advance notice of any major changes to your e-commerce platform, including any planned downtime or removal of key trading features.

43.2.7 Pay commissions from Validated Transactions to Visualsoft who will then pay those commissions to Participating Publishers regardless of any dispute or ongoing dispute with Visualsoft or Participating Publishers.

43.3 The Client will pay in full any applicable Reintegration Charges (see “Reintegration Charge”).

43.4 The Client acknowledges and agrees that Visualsoft cannot guarantee any specified number of visitors, transactions, revenue or other performance metrics irrespective of any forecasts provided.

43.5 The Client acknowledges that if it is in breach of any part of these terms then Visualsoft is entitled (but not obliged) to suspend any and all activity related to the clients account, Participating Publishers or otherwise and that the Client will still be responsible for any costs incurred previously or in the future, including those to Participating Publishers.

43.6 The client agrees to comply with all applicable laws in any country or jurisdiction of operation via their use or participation of the affiliate network.

43.7 The Client will not do or omit to do any act or thing which may cause Visualsoft to breach any applicable law or regulation.

43.8 The Client acknowledges that if Visualsoft’s performance in any of its obligations are prevented or delayed by any act of omission on the Clients behalf that Visualsoft shall not be responsible for any loss of earnings, costs or charges owing directly or indirectly to this and may also result in Visualsoft suspending or removing the provision of any services.

44. Client & Participating Publisher Relationship

44.1 The client acknowledges and agrees that:

44.1.1 This Agreement does not govern any contractual relationship between Visualsoft and it’s Publishers.



44.1.2 The Client will not pay any fee directly to a Participating Publisher, bypassing the affiliate network.

44.2 The Client will not enter into or attempt to enter into a contract or arrangement with any Affiliate currently working with Visualsoft (in any capacity) for the provision of any services that would take place outside of the affiliate network.

44.3 The Client agrees not to enter into any agreement, understanding or other form of arrangement with any Publisher whereby that Publisher is prevented from or encouraged against promoting other clients participating in the affiliate network for promotion by Publishers.

44.4 If the Client is unhappy with a Participating Publisher or a commission rate applicable to Participating Publisher, the Client shall notify Visualsoft in writing and Visualsoft will ensure that the Participating Publisher in question ceases to be a Participating Publisher or that the relevant commission rate is adjusted (after fair notice of 30 days is given to the Participating Publisher) if requested by the Client in the aforementioned notice. Visualsoft shall not be liable to the Client for the acts or omissions of any Participating Publisher and this clause (44.4) shall be the Client's only remedy against Visualsoft in respect of complaints regarding Participating Publishers.

44.5 The Client acknowledges and accepts that Participating Publishers may leave the affiliate network or change or remove the Client from time to time and that this decision is made by the Participating Publisher and without material reference to Visualsoft. Accordingly, Visualsoft shall not be liable to the Client if any particular Participating Publisher leaves the affiliate network for any reason or changes or removes the material they use to work with the Client.

45. Charges, Fees and Payments

45.1 The Client acknowledges and agrees that it will pay:

45.1.1 Any Commission Fees in respect of each Validated Transaction as set out in the Project Agreement.

45.1.2 Any Override Fees in respect of commissions paid against each Validated Transaction as set out in the Project Agreement.

45.1.3 Any Networks Fees as set out in the Project Agreement.

45.1.4 Any other fees or charges set out in the Project Agreement.

45.2 All amounts payable under this Agreement are exclusive of VAT. Where any taxable supply for VAT purposes is made under this Agreement by Visualsoft to the Client, Visualsoft shall add such VAT to its invoices at the appropriate rate and the Client shall pay to Visualsoft such additional amounts in respect of VAT as a chargeable.

45.3 Visualsoft shall invoice the Client for any fees or charges (including VAT, where appropriate) that are payable by the Client in accordance with the Project Agreement.



45.4 The Client shall pay each invoice submitted to it by Visualsoft in full, and in cleared funds, within the payment period set out in the Project Agreement to a bank account nominated in writing by Visualsoft.

45.5 Without prejudice to any other right or remedy that Visualsoft may have, if the Client fails to pay Visualsoft any charges and/or fees on or before the due date for payment, Visualsoft may:

45.5.1 charge interest on such sums from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment;

45.5.2 suspend all services and activities and the Client's ability to take part in the affiliate network until payment has been made in full and in the event of repeated cases, take permanent action;

45.5.3 suspend all other services (or any part thereof) that Visualsoft are providing to the Client (under any contract, agreement or arrangement) and/or suspend and/or restrict, in any way and to such extent as Visualsoft determine in their absolute and sole discretion, the Client's ability to access the "client admin" section of its website (if Visualsoft are able to do so) until payment has been made in full.

45.6 Time for payment shall be of the essence of this Agreement.

45.7 All payments payable to Visualsoft under this Agreement shall become due immediately on termination or expiry of this Agreement, despite any other provision. This clause 45.7 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.

45.8 The Client shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Visualsoft may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Visualsoft to the Client.

46. Validation of Transactions

In addition to any clauses previously stated which pertain to or cover in part, or in full, the process, obligations or risks of validating (or not validating) transactions in the correct and timely manner the following clauses seek to expand and clarify the validation of transactions.

46.1 The Client agrees that they are solely responsible for the validation of all transactions within the Force Approval Period and that any automation, put in place by either Visualsoft or otherwise, are intended only to supplement and guide and not to replace the need for manual processing of transaction validation.

46.2 Customers have the ability to submit a 'transaction query' to the Client via a Publisher on the affiliate network, these queries have their own Force Approval Period which can differ



from the main Force Approval Period and the customer will indicate the commission and order values they expected. It is the Client's responsibility to validate these transaction queries in exactly the same fashion and with the same diligence as a regular transaction. If the Force Approval Period expires for a transaction query it will be validated as approved and invoiced as per a normal transaction.

46.3 The Client agrees and acknowledges that it shall have no right to recover from Visualsoft or any Participating Publisher any commission fees or override fees paid in respect of Validated Transactions and the Client hereby waives and forever releases and discharges Visualsoft and any Participating Publisher from any claims which the Client may have for recovery or reversal of the fees paid to Visualsoft in respect of Validated Transactions.

46.4 The Client is strongly advised only to validate a transaction or allow a transaction to be validated through expiration of the Force Approval Period when it is certain that the transaction is valid, bona fide and not subject to any contractual, regulatory or statutory right of the customer to return the relevant product and/or service, receive a refund (in whole or in part) and/or otherwise reverse, cancel or terminate that transaction.

46.5 Visualsoft will:

46.5.1 Grant the Client access to the affiliate network in order for the Client to validate any transactions.

46.5.1 Respond as promptly as reasonably possible to any queries from the Client regarding transaction validations.

46.6 Visualsoft shall periodically (such period to be determined by Visualsoft in its absolute and sole discretion) send the Client an invoice which will incorporate any fees incurred since the previous invoice (including commission and override). The Client will be able to access a statement detailing all transactions included within said invoices by accessing the relevant pages on the affiliate network.

47. Exclusivity

47.1 For the duration of this Agreement, the Client shall not directly or indirectly enter into or attempt to enter into any agreement, contract or arrangement for the provision of any services which are the same as or similar to the services, associated with the services or complementary to the services provided by Visualsoft under this Agreement.

47.2 If the Client acts in breach of the restriction set out in clause 47.1 (or any part thereof) the client shall pay to Visualsoft, on demand by way of liquidated damages, 10% of all commissions, fees or other amounts paid or due to be paid, directly or indirectly, to any Publishers arising out of or in connection with any breach of the restriction in clause 47.1.

47.3 The parties acknowledge that the liquidated damages set out in clause 47.2 represent a genuine pre-estimate of the loss that would be suffered by Visualsoft arising out of a breach of the restriction contained in clause 47.1 by the Client.



48. Warranties

48.1 Visualsoft and the Client undertakes and warrants to each other that:

48.1.1 it has full power and authority and has obtained all necessary licences required to enter into this Agreement and shall secure and maintain during the Term, any and all authorisations, consents or licences required in respect of the performance of its obligations under this Agreement;

48.1.2 it will perform its obligations under this Agreement in accordance with all applicable laws and regulations and using all due care and skill;

48.1.3 it shall not do anything or omit to do anything which will cause the other party to be in breach of any applicable law or regulation;

48.1.4 except as otherwise provided in this Agreement, it shall not use the Intellectual Property Rights of the other party without the prior written consent of the other party; and or programme" it will not make any false, misleading or disparaging representations or statements regarding the other party.

48.2 If the Client has instructed an authorised person to represent the Client in negotiations with Visualsoft then the Client warrants to Visualsoft that the authorised person has full authority to commit the Client to this Agreement. The Client remains liable for all acts and representations and agreements of the authorised person including but not limited to the payment of all fees and charges owed to Visualsoft.

48.3 Visualsoft warrants to the Client that the services will be provided using reasonable care and skill.

49. Intellectual Property Rights

49.1 The Client hereby grants to Visualsoft during the term, a non-exclusive licence to use their Intellectual Property Rights to enable Visualsoft and Participating Publishers to use the Clients Materials to carry out their obligations hereunder and to promote the Client on the affiliate network. Accordingly, the Client grants to Visualsoft the right to grant a sublicense of the Intellectual Property Rights in and to the Client Materials to Participating Publishers on the terms of the licence granted under this clause, 49.1.

49.2 Each of the parties warrants to the other that it owns, or is licensed to use, for the purposes of this Agreement, all of the Intellectual Property Rights it requires in order to perform its obligations under these conditions and warrants that it has full rights to grant the licences referred to in clause 49.1.

49.3 Visualsoft hereby grants the Client a personal, non-exclusive, non-sublicensable, non-transferable, royalty free worldwide licence to use the tracking code on the Website(s), in each case solely for the purpose of the Client taking part in the affiliate network and performing its obligations under this Agreement.



49.4 Save as set out in this clause (49), Visualsoft reserves all of its rights in the affiliate network, the tracking code and any other Intellectual Property Rights which may come into the possession of the Client under this Agreement from time to time.

50. Limitation of Liability

50.1 The affiliate network, the service website, the tracking code, the services and their use and the results of such use are provided “as is” to the fullest extent permitted under applicable law. Visualsoft disclaims all warranties, express or implied, in relation to the affiliate network, the service website, the tracking code, the services and their use and the results of such use.

51. Indemnities

51.1 The Client shall indemnify, defend and hold harmless Visualsoft from and against all claims, costs, damages, losses, liabilities and expenses (including, without limitation, legal fees) relating to any claims, actions, suits or proceedings by third parties against Visualsoft arising out of or in relation to Visualsoft’s use of the Client Materials pursuant to this Agreement.

51.2 If a payment due under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the indemnified party shall be entitled to receive from the indemnifying party such amounts as shall ensure that the net receipt, after tax, to the indemnified party in respect of the payment is the same as it would have been were the payment not subject to tax.

52. Term & Termination

52.1 Visualsoft may terminate this Agreement immediately in written notice to the Client if:

52.1.1 The Client repeatedly fails to provide any assistance to Visualsoft in relation to Visualsoft carrying out its duties or hinder in any way Visualsoft’s ability to carry out its duties; and

52.1.2 The Client does not commence live participation in the affiliate network within 30 days from the Commencement Date.

52.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement by giving written notice to the other and without liability to the other if:

52.2.1 The other party fails to pay any amount due under this contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;

52.2.2 The other party commits a material breach of any other term of this contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen days after being notified in writing to do so;



52.2.3 The other party repeatedly breaches any of the terms of this contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this contract;

52.2.4 The other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

52.2.5 The other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

52.2.6 A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

52.2.7 An application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

52.2.8 The holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

52.2.9 A person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

52.2.10 A creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen days;

52.2.11 The other party is the subject of a bankruptcy petition or order; or

52.2.12 Any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 52.2.4 to condition 52.2.11 (inclusive);

54.4 Any provision of this contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this contract shall remain in full force and effect.

54.5 Termination or expiry of this contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this contract which existed at or before the date of termination or expiry.



54.6 On termination or expiry of this contract:

54.6.1 Visualsoft will cease to use the Client Materials;

54.6.2 The Client will cease all use of the Intellectual Property Rights licensed under this Agreement;

54.6.3 Each party shall, within a reasonable time not exceeding 5 business days, return all of the other party's equipment and materials that are in that party's possession and arrange for the safe return or destruction of all confidential information of the other party in its possession or otherwise under its control; and

54.6.4 The Client shall pay to Visualsoft all of Visualsoft's outstanding unpaid invoices and interest and, in respect of any fees and/or charges for which no invoice has been submitted, Visualsoft may submit an invoice, which shall be payable immediately on receipt.