

## WEB HOSTING AGREEMENT

### BETWEEN:

- 1) One Source Communications Limited, (company registration number 07062362) whose registered office is at 16 Commerce Road, Lynch Wood, Peterborough. PE2 6LR, (the "Company"); and
- 2) [insert company name], (company registration number [insert reg. no]) whose registered office is at [insert registered address], (the "Customer").

This Agreement (the "Agreement") sets out the terms on which the Company has agreed to host the Customer's web site including the Statement of Works.

### 1. Definitions

- 1.1. "Affiliate" means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;
- 1.2. "Business Day" means any week day, other than a bank or public holiday in England;
- 1.3. "Business Hours" means between 09:00 and 17:30 on a Business Day;
- 1.4. "Confidential Information" means any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as "confidential", described as "confidential" or reasonably understood to be confidential;
- 1.5. "Content" means all text, pictures, sounds, graphics, video and other data supplied by the Customer to the Company on the Customer's website;
- 1.6. "Control" means the legal power to control (directly or indirectly) the management of an entity and "Controlled" will be construed accordingly;
- 1.7. "Commencement Date" means the date of acceptance of this Agreement;
- 1.8. "Fees" means the amounts payable by the Customer to the Company in relation to the Agreement as detailed on the Statement of Work;
- 1.9. "Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected including but not limited to:
  - 1.9.1. acts of God, fire, flood, earthquake, windstorm, extreme weather conditions, or other natural disaster;
  - 1.9.2. war, threat of or preparation for war, armed conflict, terrorist attack, imposition of sanctions, embargo, breaking off of diplomatic relations, riots or civil commotion, or similar actions;
  - 1.9.3. voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
  - 1.9.4. collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
  - 1.9.5. any labour dispute, including but not limited to strikes, industrial action or lockouts;
  - 1.9.6. non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause);
  - 1.9.7. interruption, non-performance or failure of utility service(s), including but not limited to electric power, telecommunications, gas or water.

- 1.9.8. failures of or problems with the internet or a part of the internet that are not directly under the control of the supplier.
- 1.9.9. Hacker attacks, virus or other malicious software attacks or infections.
- 1.10. "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.11. "Minimum Term" means a minimum period of 1 calendar year starting on the Commencement Date.
- 1.12. "Personal Data" has the meaning given to it in the Data Protection Act 1998;
- 1.13. "Product" is the Customer's website as defined in the Statement of Works.
- 1.14. "Services" means the services provided under the Agreement as specified in the Statements of Work;
- 1.15. "Statement of Work" means a statement of work signed by each of the parties specifying the scope of the Services relating to the Agreement;
- 1.16. "Term" means the term of this Agreement;
- 1.17. "Year" means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Commencement Date or on any anniversary of the Commencement Date.

## **2. TERM**

- 2.1. Unless terminated by either party in accordance with Clause 13, this Agreement shall commence on the Commencement Date and shall continue for the Minimum Term. At the end of the Minimum Term this Agreement shall automatically renew for a further 1 year Term, unless either party terminates in accordance with Clause 13.

## **3. The Company's Obligations**

- 3.1. To provide the Service as detailed in the Statement of Works for the Term of the Agreement.
- 3.2. To invoice the Customer for the Fees as detailed in the Statement of Works.

## **4. Customer obligations**

- 4.1. The Customer acknowledges that they are responsible for:
- 4.1.1. Supplying the Company with all the requirements contained in the Statement of Work within the time frames detailed;
- 4.1.2. procuring any third party co-operation reasonably required for the provision of the Services;
- 4.1.3. obtaining all relevant licences which are required for the full use of the Services;
- 4.1.4. obtaining all relevant rights and permissions for and to use the Content;
- 4.1.5. all costs for preparing and maintaining the Content and the Product including but not limited to compliance with applicable laws, before and during the Agreement.
- 4.1.6. notifying the Company with any concerns in writing including clearly explained written feedback relating to any complaints, reviews, queries or concerns that it may

have relating to agreed work or services and provide the opportunity to correct any defects, make enhancements, or carry out re-designs that may be reasonably requested by the customer.

- 4.2. The Customer acknowledges that the Company is not responsible for any errors in the finished Product relating to any Content provided by the Customer. The Customer shall have full responsibility for the final proofreading of the Product and in the event that Customer has approved the Products but errors, such as, by way of example, not limitation, typographic errors or misspellings, remain in the finished Product, Customer shall incur the cost of correcting such errors.
- 4.3. The Customer shall be responsible for keeping all passwords relating to the Services confidential, and to change such passwords on a regular basis. The Customer will notify the Company immediately if it becomes aware or suspects that a password relating to the Services is or may have been compromised or misused.
- 4.4. The Customer acknowledges that they are fully responsible for the Content and running of the Product.
- 4.5. The Services are provided to the Customer only, and the Customer must not resell or otherwise provide or make available the Services to any third party.
- 4.6. The Customer agrees to appoint a Project Manager within 2 days of the Commencement Date who shall have the authority to make decisions on the Service and provide the Content detailed in the Statement of Works within the time frames provided. Including but not limited to signing off the final product.
  - 4.6.1. The Customer shall use all reasonable endeavours to ensure that the same person acts as the Project Manager throughout the term of this Agreement, but agrees to notify the Company in writing of the identity of a replacement;
- 4.7. The Customer is responsible for communicating with its own end users and for handling all complaints and trouble reports made by such users.
- 4.8. The Customer acknowledges that the Company shall not be responsible for any breach of this Agreement in respect of any delays or failures to perform any of its obligations of this Agreement due to the delays or failure of the Customer supplying the Content within the time schedule detailed in the Statement of Work.

## **5. Use of the Services**

- 5.1. The Customer must not use any of the Services:
  - 5.1.1. to host, store, send, relay or process any:
    - 5.1.1.1. Content which breaches any applicable laws, regulations or legally binding codes, or infringes any third party Intellectual Property Rights or other third party rights, or may give rise to any form of legal action;
    - 5.1.1.2. pornographic or lewd Content; or
    - 5.1.1.3. messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance, inconvenience or anxiety to another internet user, or constitute spam or bulk unsolicited mail;
  - 5.1.2. for any purpose which is unlawful, fraudulent, or infringes any third party rights;
  - 5.1.3. in any way which may put the Company in breach of a contractual or other obligation owed by the Customer to any internet service provider.

- 5.2. The Customer must ensure that all Contents provided to the Company by or on behalf of the Customer in connection with the Agreement, and the use of those Contents by The Company in accordance with the terms of the Agreement will not infringe any person's Intellectual Property Rights or other legal rights, will not breach any applicable laws or regulations, and will not give rise to a cause of action against any person in any jurisdiction.
- 5.3. Where the Company reasonably suspects that there has been a breach of the provisions of this Clause 5, the Company may:
  - 5.3.1. delete or amend the relevant Contents; and/or
  - 5.3.2. suspend any or all of the Services and/or the Customer's access to any or all Services while it investigates the matter.
  - 5.3.3. charge the Customer any costs incurred due to the breach.
- 5.4. Any breach by the Customer of this Clause 5 will be deemed to be a Content breach of the Agreement for the purposes of Clause 13.

## **6. Fees and payment**

- 6.1. The Company will issue invoices for the Fees to the Customer in accordance with the provisions of the Statement of Work.
- 6.2. The Customer will pay the Fees to the Company on or before the dates set out in the Statement of Work.
- 6.3. All Fees stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise, which will be charged where appropriate.
- 6.4. Fees must be paid by direct debit, bank transfer or by cheque (using such payment details as are notified by the Company to the Customer from time to time).
- 6.5. The Company reserves the right to rescind the Service if payment is not made in full by the due date. In addition to the Company's right to suspend the Service, the Company may charge interest under the Late Payment of Commercial Debts (Interest Act) 1998 on the unpaid amount (both before and after judgement) at the rate of four percent (4%) per annum over the base lending rate of Barclays Bank Plc and such interest shall accrue notwithstanding termination of this Agreement by either party for whatever reason.
- 6.6. The Company will:
  - 6.6.1. collect and collate evidence of all additional expenses passed on to the Customer through the Fees;
  - 6.6.2. retain such evidence during the Term and for a period of 12 months following the end of the Term; and
- 6.7. The Company may vary the Fees on and from any anniversary of the Term by giving to the Customer written notice of the variation.

## **7. Warranties**

- 7.1. The Customer warrants to the Company that;
  - 7.1.1. it has the legal right and authority to enter into and perform its obligations under the Agreement;
  - 7.1.2. It owns and/or has authorisation to use all the Intellectual Property rights, copyrights and licences for the Product and the Content;
  - 7.1.3. that all Content provided in relation to this Agreement complies with all applicable laws and regulations and all applicable industry standards including but not limited to

the Financial Services and Markets Act 2000, Financial Conduct Authority, Consumer Credit Act 1974, Committee of Advertising Practice;

- 7.1.4. That it will perform its obligations under the Agreement with reasonable care and skill.
- 7.2. The Company warrants to the Customer:
  - 7.2.1. that it has the legal right and authority to enter into and perform its obligations under the Agreement; and
  - 7.2.2. that it will perform its obligations under the Agreement with reasonable care and skill.
- 7.3. The Customer acknowledges that there is no guarantee of security or privacy on the Internet, and the Company offers no guarantee or provides no warranty (express or implied) that the Service or Customer Content will be secure or private.
- 7.4. All of the parties' obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

## **8. Indemnity**

- 8.1. The Customer hereby indemnifies and undertakes to keep indemnified the Company against all liabilities, losses, costs, damages, expenses (including legal expenses and amounts paid upon advice in settlement of any legal action) arising directly or indirectly (including as a result of a third party claim against the Company) of any breach by the Customer of any term of the Agreement.

## **9. Limitations of liability**

- 9.1. Nothing in the Agreement will exclude or limit the liability of either party for:
  - 9.1.1. death or personal injury caused by that party's negligence;
  - 9.1.2. fraud or fraudulent misrepresentation on the part of that party; or
  - 9.1.3. any other liability which may not be excluded or limited under applicable law.
- 9.2. Subject to Clause [9.1], the Company's liability under or in connection with the Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:
  - 9.2.1. the Company will not be liable for any:
    - 9.2.1.1. loss of profits, income or anticipated savings,
    - 9.2.1.2. loss or corruption of any data, database or software,
    - 9.2.1.3. reputational damage or damage to goodwill;
    - 9.2.1.4. loss of any commercial opportunity, or
    - 9.2.1.5. indirect, special or consequential loss or damage;
  - 9.2.2. the Company will not be liable for any losses arising out of a Force Majeure Event; and
  - 9.2.3. the Company's liability in relation to any event or series of related events will in no circumstances exceed the greater of:
    - 9.2.3.1. £100,000.00 ; and
    - 9.2.3.2. the total amount paid (or, if greater, payable) by the Customer to the Company under the Agreement during the 12 month period immediately preceding the event or series of events.

## **10. Data protection**

10.1. The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Company under the Agreement, and that the processing of that Personal Data by the Company for the purposes of and in accordance with the terms of the Agreement will not breach any applicable laws (including the Data Protection Act 1998).

10.2. The Company warrants that:

10.2.1. it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Company on behalf of the Customer; and

10.2.2. it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Company on behalf of the Customer.

## **11. Intellectual Property**

11.1. The Customer confirms that it has full ownership or full permission to use all Content included in the website, unless uploaded by the website users.

## **12. Confidentiality**

12.1. Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause 12.

12.2. The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.

12.3. These obligations of confidentiality will not apply to Confidential Information that:

12.3.1. has been published or is known to the public (other than as a result of a breach of the Agreement);

12.3.2. is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or

12.3.3. is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.

## **13. Termination**

13.1. Either party may terminate the Agreement at any time by giving at least 30 days' written notice to the other party expiring at any time after the later of the end of the Minimum Term.

13.2. Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:

13.2.1. commits any Content breach of any term of the Agreement, and:

13.2.2. the breach is not remediable; or

13.2.3. the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or

13.2.4. persistently breaches the terms of the Agreement.

13.3. Either party may terminate the Agreement immediately by giving written notice to the other party if:

13.3.1. the other party:

13.3.1.1. is dissolved, or becomes insolvent or is declared insolvent;

13.3.1.2. ceases to conduct all (or substantially all) of its business;

13.3.1.3. is or becomes unable to pay its debts as they fall due;

- 13.3.1.4. convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- 13.3.1.5. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- 13.3.1.6. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

#### **14. Effects of termination**

- 14.1. Termination of the Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.
- 14.2. Subject to Clause 13.1, upon termination all the provisions of the Agreement will cease to have effect, save that:
  - 14.2.1. the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 6, 8, 9, 10, 11, 12, 13, 15 and 17]; and
- 14.3. The Customer will not be entitled to any refund of Fees on termination, and will not be released from any obligation to pay any accrued Fees to the Company.

#### **15. Non-solicitation**

- 15.1. Neither party will, without the other party's prior written consent, during the Term or for a period of 6 months after the end of the Term, directly or indirectly, either for itself, himself, herself or for any other person, firm or company:
  - 15.1.1. solicit the business of any person, firm, company or otherwise who is or was a client, customer, supplier, sub-contractor or agent of the other party; or
  - 15.1.2. engage, employ or otherwise solicit for employment any employee or contractor of the other party involved in the performance of the Agreement.

#### **16. Notices**

- 16.1. Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by pre-paid first class post for the attention of the relevant person, and to the relevant address given in the applicable Statement of Work (or as notified by one party to the other in accordance with this Clause).
- 16.2. A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
  - 16.2.1. where the notice is delivered personally, at the time of delivery;
  - 16.2.2. where the notice is sent by first class post, 48 hours after posting; and

#### **17. Web Server Availability**

- 17.1. The Customer acknowledges that the web service availability will never be 100% but the Company aims for 99% availability. Goal: Server availability will be 99% or higher.
- 17.2. Exceptions:

- 17.2.1. Force Majeure Event;
  - 17.2.2. scheduled maintenance and emergency maintenance and upgrades;
  - 17.2.3. DNS (Domain Name Server) issues outside the direct control of the Company;
  - 17.2.4. issues with FTP, POP, IMAP, or SMTP customer access;
  - 17.2.5. Customer's acts or omissions (or third party acting on behalf of the customer) without limitation, custom scripting or coding (e.g., CGI, Perl, HTML, ASP, PHP etc), any negligence, wilful misconduct, or use of the services in breach of Clause 5;
  - 17.2.6. e-mail or webmail delivery and transmission;
  - 17.2.7. DNS (Domain Name Server) Propagation;
  - 17.2.8. outages elsewhere on the Internet that hinder access to the web server, including browser caching that may make it appear inaccessible when other can still access it.
- 17.3. Credit Requests and Payment: Downtime, outside those listed in Clause 17.2, above 1% annually will be repaid according pro rata to the Fee's paid, limited to 50% of hosting costs. Repayment is made at the end of the 12 month term. Downtime incidents must be reported whilst the downtime is occurring and cannot be reported once the server is back up.

## **18. General**

- 18.1. Headings in the Agreement shall not affect interpretation.
- 18.2. A delay in enforcing any rights under this Agreement shall not be a waiver as any waiver must be expressly granted in writing and signed by both parties.
- 18.3. The unenforceability or invalidity of any part of this Agreement shall not affect the enforceability of the remainder of it.
- 18.4. Nothing in the Agreement will create, or be deemed to create, a partnership or the relationship of principal and agent for employer and employee between the parties.
- 18.5. The Agreement contains the entire agreement and supersedes all other agreements and undertakings between the parties with respect to its subject matter. Any terms proposed by the Customer that are not written in this Agreement shall be of no effect. The Customer acknowledges that, in entering into this Agreement, it does so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly written in the Agreement, and that its only remedy can be for breach of contract.
- 18.6. There are no third party beneficiaries to this Agreement and a person who is not a party to it shall not have any right to enforce any of its terms under the Contract (Rights of Third Parties) Act 1999 or otherwise.
- 18.7. English Law shall govern the validity, construction and performance of the Agreement and the parties submit to the exclusive jurisdiction of the English Courts.
- 18.8. The Customer may not assign or transfer this Agreement or any rights hereunder without the prior written consent of the Company.
- 18.9. The Company may assign or transfer this Agreement or any rights hereunder to an Associated Company or any other person.

**Signed and agreed on behalf of One Source Communications Limited**

Signed:

Name:

Date:

**Signed and agreed on behalf of**

Signed:

Name:

Date: