
FOOTSTEPS DESIGN LIMITED

TERMS AND CONDITIONS OF SUPPLY

AGREED TERMS

1. INTERPRETATION

1.1 Definitions:

"Back Up"	the copying of physical or virtual files or databases to a secondary site or the creation of supplementary copies that may later be used to restore the original contents in the event of data loss, equipment failure or other catastrophe.
"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Business Hours"	09:00 – 17:00 Monday to Friday.
"Commencement Date"	has the meaning defined in clause 2.1.
"Charges"	the total charges payable by the Customer for the supply of a Service and associated Deliverables by Footsteps, as set out in the Sales Order, including but not limited to the Deposit, Milestone Payments and Final Invoice for that Service.
"Contract"	has the meaning set out in clause 1.2.4.
"Customer Materials"	all text, materials, photos, illustrations, graphics, equipment and tools, drawings, specifications and data supplied by the Customer to Footsteps.
"Customer Representative"	an authorised individual of the Customer.

“Daily Rate”	the daily rate from time to time of an individual engaged or employed by Footsteps to provide the Services.
"Deliverables"	those documents, products, designs, software, website and materials developed by Footsteps or its agents, subcontractors and personnel as part of or in relation to a Service in any form, including without limitation website design, programming, website function, print designs, promotional items, logo design, branding and specifications (including drafts and quantity of Products) as set out in the Sales Order and a relevant Service Specification.
“Deposit”	the sum of the relevant deposit for a Service as set out in the Sales Order.
“Final Invoice”	the final sum for a Service to be paid by the Customer to Footsteps as set out in the Sales Order.
"Footsteps IPRs"	all Intellectual Property Rights subsisting in the Deliverables excluding any Customer Materials incorporated in them but including any design ideas that have been presented to the Customer but not used in whole or in part in the Deliverables.
“Hosting”	the provision of hosting services as detailed in Schedule 1 and, where applicable, as agreed in a Specification.
"Intellectual Property Rights"	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, copywriting, 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, rights in code, graphics and text, database rights, topography 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.
“Logo Design”	the provision of logo design services as detailed in Schedule 1. and, where applicable, as agreed in a Specification.
“Milestone”	an agreed, specified and detailed stage in the supply of Services.
“Milestone Payment”	the sum in relation to the relevant Milestone for a Service as set out in the Sales Order.
“Product”	those products that are ordered by the Customer and modified by Footsteps.
“Print Design”	the provision of print design services and copywriting as detailed in Schedule 1 and, where applicable, as agreed in a Specification.
“Proposal”	that document setting out a high level overview of the Services required by the Customer generally prior to a Sales Order being agreed.
“Service”	any one or more of either Website Design, Website Programming, Print Design, Logo Design, Hosting or Website Maintenance including any relevant Deliverables for each, to be provided by Footsteps pursuant to this Contract and a Specification to the extent identified and set out in the Sales Order. “Services” shall be construed accordingly.
“Specification”	a clear, concise and detailed written specification of the relevant Service and Deliverables as well as details of any Milestones and delivery dates.

“Supply of Products”	the provision of the supply of Products as detailed in Schedule 1 and, where applicable, as agreed in a Specification.
“Terms and Conditions”	these terms and conditions as set out in clause 1 to clause 14 (inclusive) and Schedule 1.
“Website Design”	the provision of website creation copywriting and design services as detailed in Schedule 1 and, where applicable, as agreed in a Specification.
“Website Maintenance”	the provision of website maintenance services as detailed in Schedule 1 and, where applicable, as agreed in a Specification.
“Website Programming”	the provision of website programming as detailed in Schedule 1 and, where applicable, as agreed in a Specification.

1.2 Interpretation:

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.2 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.3 A reference to **writing** or **written** includes email.
- 1.2.4 This Contract is made up of the following:
- (a) the Sales Order;
 - (b) the Specification;

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- (c) these Terms and Conditions;
 - (d) Schedule 1; and
 - (e) the Proposal,

and if there is any conflict or ambiguity between the terms of the documents listed above, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

2. SUPPLY OF SERVICES

- 2.1 The Contract will be deemed to be accepted by the Customer on the earlier date (“**Commencement Date**”) of either:
 - 2.1.1 the date Customer signs the Sales Order;
 - 2.1.2 the date the Customer gives Footsteps verbal acceptance of either the Sales Order, Proposal or Specification or otherwise verbally requests that Footsteps commences the supply of Services; or
 - 2.1.3 the date the Customer gives Footsteps written acceptance of either the Sales Order, Proposal or Specification or otherwise requests in writing that Footsteps commences the supply of Services.
- 2.2 Footsteps shall supply the Services to the Customer from the Commencement Date in accordance with this Contract and in consideration of the Charges.
- 2.3 Prior to the relevant Service being carried out, the Customer shall either:
 - 2.3.1 draft a Specification for each of the Services to be agreed in writing with Footsteps; or
 - 2.3.2 request a Specification to be drafted by Footsteps and, on review, agree the same in writing.

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- 2.4 On agreement between the parties of a Specification, the Customer will pay Footsteps the relevant Deposit for such Service prior to Footsteps carrying out any further works.
- 2.5 Subject to clause 2.6 below, Footsteps will complete each Milestone according to the Specification and submit an invoice for the relevant Milestone Payment on completion.
- 2.6 Each Milestone will be deemed to be completed once both parties have agreed the same in writing.
- 2.7 A subsequent Milestone will not be carried out until Footsteps has received full and cleared funds of a Milestone Payment pursuant to clause 2.5, unless otherwise agreed between the parties in writing.
- 2.8 Time for performance and/or delivery of each Milestone and Deliverable is not of the essence and notified dates for delivery are estimates only.
- 2.9 Footsteps will not be liable for any delays to the date of delivery for a Milestone to the extent the same is altered under clause 5 or due to any acts or omissions of the Customer that prevents or delays delivery of a Service.
- 2.10 Any such delays under clause 2.9 will, where practicable, be notified to the Customer in writing and Footsteps may submit an interim invoice for work completed up to the original notified date of delivery.
- 2.11 To the extent agreed in the Specification or otherwise agreed between the parties in writing, the Customer will supply to Footsteps all materials, documents, information and other data including but not limited to Intellectual Property required for Footsteps to provide the relevant Service.
- 2.12 **Third Party Software.**
- 2.12.1 In the event Footsteps, in its sole opinion, considers it necessary to install or integrate third party software into a Product or Website in order to fulfil its obligations to the Customer under a Specification, it shall install the same.
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2.12.2 Where third party software is integrated pursuant to clause 2.12.1, Footsteps will not, and is not authorised to, carry out any modification of such software and its source code.

2.12.3 Footsteps will not be liable for any subsequent loss of service, function or content as a consequence of the Customer modifying such third party software after delivery.

2.12.4 Footsteps shall use reasonable commercial endeavours to work with the relevant third party to rectify such loss set out in clause 2.12.3 at the written request of the Customer, and provide the Customer with progress updates.

2.12.5 There shall be no assignment of a licence of third party software by one party to the other unless otherwise agreed in writing between the parties or agreed in a Specification or Sales Order.

2.13 **Product Supply.**

2.13.1 Footsteps may subcontract a third party to supply Products or services including, but not limited to, social media, roll banners, pop-ups, forms, signage, brochures and printing onto the same.

2.13.2 Footsteps will not be liable for any failure of the Product as a consequence of the Customer modifying such Product after delivery.

2.13.3 Footsteps shall use reasonable commercial endeavours to work with the relevant third party to rectify any failure of the Product at the written request of the Customer, and provide the Customer with progress updates.

2.14 **Hosting.**

2.14.1 In the event Footsteps will supply Hosting as a Service, the same will be provided through a third party subcontractor.

2.14.2 Footsteps shall not assign its licence for Hosting in relation to this Contract to the Customer unless otherwise agreed in writing between the parties or agreed in a Specification or Sales Order.

2.14.3 Footsteps shall use reasonable commercial endeavours to work with the relevant third party to rectify any loss of service, function or content as a consequence of supplying the Customer with Hosting at the written request of the Customer, and provide the Customer with progress updates.

2.14.4 In the event the Customer requests Footsteps to provide Hosting by a third party and either:

- (a) the Customer does not want to receive shared hosting services from such third party; and/or
- (b) that third party is not a prior approved by Footsteps as a third party for the provision of Hosting,

any failure in such Hosting Services that requires time and materials from Footsteps will be charged to the Customer in accordance with clause 8.9.

2.14.5 Any Hosting provided by Footsteps to a Customer prohibits:

- (a) illegal, abusive or offensive emails and/or the sending of bulk unsolicited emails (SPAM);
- (b) illegal, abusive or offensive content on websites or anything therein which promotes or incites illegal activities in any jurisdiction;
- (c) illegal, abusive or offensive content or statements on chat rooms, bulletin boards, user nets or electric open forum debates,

and Footsteps may terminate this Contract if the Customer is in breach of this clause 2.14.5.

2.15 **Website Maintenance.**

2.15.1 In the event Footsteps provides Website Maintenance, Footsteps will Back Up the Customer's Website during every calendar month and apply any updates to the software and platform of the Website as required ("**Updates**"), in the sole opinion of Footsteps, for the continued functioning of the Website.

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- 2.15.2 Footsteps will not be liable for any loss of service, function or content to the Website as a consequence of providing Website Maintenance including, but not limited to, virus attack, extension failure and payment gateway failure, however, Footsteps shall use reasonable commercial endeavours to work with any relevant third party at fault to rectify such failure at the written request of the Customer, and provide the Customer with progress updates.
- 2.16 In supplying any and all of the Services, Footsteps shall:
- 2.16.1 perform the Services with reasonable care and skill;
 - 2.16.2 perform the Services within Business Hours unless otherwise prior agreed in writing between the parties;
 - 2.16.3 use reasonable endeavours to perform the Services in accordance with the Specification, the relevant service description set out in Schedule 1 and clause 5 in all material respects;
 - 2.16.4 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality;
 - 2.16.5 comply with all applicable laws, statutes, regulations and codes from time to time in force;
 - 2.16.6 take reasonable care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request, always provided that Footsteps may destroy the Customer Materials if the Customer fails to collect the Customer Materials within a reasonable period after termination of this Contract.
- 2.17 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from this Contract.
- 2.18 Footsteps shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the packing, packaging, marking, storage, handling, and delivery of the Deliverables.
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- 2.19 Footsteps does not guarantee search engine rankings at any time.
- 2.20 Footsteps does not guarantee compatibility of the Website and any Services relating to it with future browsers although Footsteps will use its reasonable endeavours for degradation in older browsers where possible.

3. CUSTOMER'S OBLIGATIONS

- 3.1 The Customer shall:
- 3.1.1 co-operate with Footsteps in all matters relating to the Services;
 - 3.1.2 provide, for Footsteps, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by Footsteps;
 - 3.1.3 provide, in a timely manner, such documents, items and material used and information in such form as Footsteps may reasonably require, and ensure that it is accurate in all material respects; and
 - 3.1.4 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Footsteps to provide the Services, including in relation to the use of all Customer Materials in all cases before the date on which the Services are to start during the term of the Contract.
- 3.2 For any and all Services requiring any work to be provided to the Website and where there the Customer has not entered into an agreement for Maintenance, the Customer is responsible for the Back Up of its relevant Website.

4. APPROVAL OF WORK

- 4.1 Once each Milestone has been achieved, Footsteps will notify the Customer of the same in writing.

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- 4.2 The Customer shall notify Footsteps in writing of any part of the Service provided that fails to meet the Specification of that Milestone within seven (7) Business Days of deemed receipt of notice under clause 4.1.
- 4.3 If the Customer does not identify any failures in accordance with clause 4.2, the Milestone will be deemed to be completed and an invoice (if relevant in accordance with the Charges) will be submitted.
- 4.4 In the event the failure to meet the Specifications is due to a misinterpretation of the Specification, Footsteps shall not be held liable for such misinterpretation and to the extent any alternations are to be made to the Services for the relevant Milestone, any additional work required will be notified to the Customer pursuant to clause 5.
- 4.5 If the Customer raises a failure of the Specification after the Milestone is deemed to be accepted, the invoice submitted for the same will not be disputed and any further works to rectify the failure will be charged pursuant to the Daily Rate.
- 4.6 If the Milestone is not approved pursuant to clause 4.2 due to the Milestone not meeting its Specification, Footsteps will use its reasonable endeavours to rectify the issue, and re-submit the Milestone to the Customer for approval.
- 4.7 To the extent Footsteps is required to rectify an issue under this clause 4, Footsteps may submit an alternative delivery date of completion of the relevant Milestone.
- 4.8 In relation to any Services relating to the Website, the Customer is responsible for testing and checking functionality, design and compatibility against the Specification prior to each Milestone being approved by the Customer whether deemed or actual approval.
- 4.9 In relation to any Logo Design, copywriting and Products, the Customer is responsible for checking all final artwork prior to each Milestone being approved by the Customer whether deemed or actual approval and Footsteps will not be held liable for any text, copy or graphical errors on Deliverables nor any reprint costs due to such errors.
- 4.10 Footsteps warrants that at the time the Website is published to the internet for public consumption, any code specifically developed by Footsteps for the Customer for its
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Website will be free from all viruses provided that the source code or configuration is not modified or altered in any way by any third party that is not Footsteps or Footsteps' sub-contractors.

- 4.11 In the event the Contract includes the provision of Hosting, Website Maintenance and/or Website Design, Footsteps may, at its sole discretion, temporarily take the relevant Website offline if the relevant Milestone Payment is not paid by the Customer in accordance with clause 8.7.

5. CHANGE CONTROL

- 5.1 Either party may propose changes to the scope or execution of the Services, Sales Order and/or Specification, but no proposed changes shall come into effect until a "**Change Order**" has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- 5.1.1 the Services;
- 5.1.2 the Charges;
- 5.1.3 the Milestones; and
- 5.1.4 any of the terms of this Contract.

- 5.2 If Footsteps wishes to make a change to the Services it shall provide a draft Change Order to the Customer.

- 5.3 If the Customer wishes to make a change to the Services:

- 5.3.1 it shall notify Footsteps and provide as much detail as Footsteps reasonably requires of the proposed changes, including the timing of the proposed changes; and
- 5.3.2 Footsteps shall, as soon as reasonably practicable after receiving the information at clause 5.3.1, provide a draft Change Order to the Customer.

- 5.4 If the parties:

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- 5.4.1 agree to a Change Order, they shall sign it and that Change Order shall amend this Contract; or
- 5.4.2 are unable to agree a Change Order, Footsteps shall, at its sole discretion, either:
- (a) continue with the Contract without any changes as set out in such Change Order;
 - (b) deal with the disagreement in accordance with the dispute resolution procedure in clause 14.12; or
 - (c) terminate the Contract.
- 5.5 Footsteps may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 5.3 at Footsteps' Daily Rates.
- 6. INTELLECTUAL PROPERTY**
- 6.1 Footsteps and its licensors shall retain ownership of all Footsteps IPR and shall be permitted to use any of Footsteps IPR in whole or in part for any of its third party customers.
- 6.2 The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials during and after the term of the Contract.
- 6.3 Footsteps grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy Footsteps IPRs for the purpose of receiving and using the Services and the Deliverables in the Customer's business during and after the term of the Contract.
- 6.4 The Customer grants Footsteps a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence:

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- 6.4.1 to copy and modify the Customer Materials for the term of this Contract for the purpose of providing the Services to the Customer in accordance with this Contract; and
- 6.4.2 where agreed Footsteps in the Sales Order, to use the Customer Materials after the term for promotional purposes, including but not limited to Footsteps' website and/or images of Deliverables.
- 6.5 The Customer shall hold Footsteps harmless and keep Footsteps indemnified in full against any sums awarded by a court against Footsteps as a result of or in connection with any claim brought against Footsteps for infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Customer Materials by Footsteps and/or the Deliverables.
7. **DELIVERY**
- 7.1 Subject to Force Majeure Events, Footsteps shall use reasonable endeavours to deliver the Deliverables within 5 Business Days after Footsteps has notified the Customer that the Deliverables are ready for delivery.
- 7.2 Delivery is completed:
- 7.2.1 for tangible Deliverables including but not limited to Products, when Footsteps places the Deliverables at the Customer's disposal at the Customer's Address; and
- 7.2.2 for Website related Deliverables, when Footsteps releases its administration rights to the Website and provides a web link to the Customer; and
- 7.2.3 for Logos when Footsteps delivers a Logo pack to the Customer; and
- 7.2.4 Print Design, when Footsteps emails a minimum of 300dpi resolution image to the Customer free of any watermarks.
- 7.3 Delays in the delivery of Deliverables shall **not** entitle the Customer to:
- 7.3.1 refuse to take delivery of Deliverables; or
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7.3.2 claim damages; or

7.3.3 terminate this Contract.

7.4 Footsteps shall have no liability for any failure or delay in delivering Deliverables to the extent that any failure or delay is caused by the Customer's failure to comply with its obligations under this Contract.

8. CHARGES AND PAYMENT

8.1 In consideration for the provision of the Services, the Customer shall pay Footsteps the Charges for each of the Services in accordance with this clause 8.

8.2 After the Specification has been agreed for a Service pursuant to clause 2.3, Footsteps shall send an invoice to the Customer for payment of the Deposit for that relevant Service.

8.3 On completion of a Milestone pursuant to clause 2.6, the relevant Milestone Payment (if applicable) will be invoiced to the Customer by the Supplier.

8.4 Unless otherwise agreed in writing, Footsteps will not proceed with the next Milestone unless and until the Customer has paid any and all outstanding invoices for a Deposit or a Milestone Payment.

8.5 Delivery of the Deliverables will only occur once all relevant invoices sent to the Customer have been paid in accordance with this clause 8.

8.6 All invoices are due and payable in full and cleared funds within 14 days of the date of the invoice.

8.7 Notwithstanding clause 8.6, all invoices for Milestone Payments are due and payable in full and cleared funds within fourteen (14) days of the date of the invoice.

8.8 The Services shall be provided on the following basis:

8.8.1 the total price for each Service shall be the Charges (as set out in the Sales Order) and any additional expenses, disbursements, cost of materials and third-party services that are due and VAT, where appropriate;

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- 8.8.2 the total price shall be paid to Footsteps by Milestone Payments, with the payment of each Milestone Payment being conditional on Footsteps having achieved the appropriate Milestone; and
- 8.8.3 where a Milestone has only been partially achieved by its corresponding Milestone Date on the termination date, the amount due shall be a pro-rated sum of the relevant Milestone Payment to reflect the time spent achieving the same up to the date of termination and shall be calculated on the basis of Daily Rates.
- 8.9 Where the Charges are calculated on a time and materials basis:
- 8.9.1 Footsteps' Daily Rates for each individual person as are calculated on the basis of that individual working full Business Hours on a Business Day;
- 8.9.2 Footsteps shall be entitled to charge an overtime rate of 200% of the standard Daily Rate on a pro-rata basis for any hours worked by individuals whom it engages on a Service outside Business Hours; and
- 8.9.3 Footsteps shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and Footsteps shall indicate the time spent per individual in its invoices.
- 8.10 All amounts payable by the Customer exclude amounts in respect of value added tax ("VAT"), which the Customer shall additionally be liable to pay to Footsteps at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 8.11 All invoices due and payable under this Contract shall be paid in full and cleared funds to a bank account nominated in writing by Footsteps.
- 8.12 All invoices relating to Maintenance will be charged monthly in advance.
- 8.13 All invoices relating to Hosting (including but not limited to relevant Customer domain names) will be charged annually in advance.
- 8.14 If the Customer fails to make any payment due to Footsteps under this Contract by the due date for payment, then, without limiting Footsteps' remedies under clause 12:
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- 8.14.1 the Customer shall pay interest on the overdue amount at the rate of 3% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
- 8.14.2 Footsteps may suspend all Services and retain possession of all Deliverables until payment of each invoice due under this Contract has been made in full.
- 8.15 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify Footsteps in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. Footsteps shall provide all evidence as may be reasonably necessary to verify the disputed invoice or request for payment.
- 8.16 If the parties have not resolved a dispute within 30 days of the Customer giving notice to Footsteps under clause 8.15, the dispute shall be resolved in accordance with clause 14.12.
- 8.17 Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in this clause 8.
- 8.18 All amounts due under this Contract shall be paid by the Customer to Footsteps in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9. DATA PROTECTION AND DATA PROCESSING**
- 9.1 The Customer and Footsteps acknowledge that for the purposes of the Data Protection Act 1998 and the General Data Protection Regulations (GDPR – in force from 25.05.2018), the Customer is the Data Controller and Footsteps is the data processor in respect of any Personal Data. Nothing in this agreement shall relieve Footsteps of any direct liability it may have as a processor under the GDPR.

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- 9.2 Footsteps shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.
- 9.3 Footsteps shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 9.4 Footsteps warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- 9.4.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
- (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - (b) the nature of the data to be protected.
- 9.4.2 take reasonable steps to ensure compliance with those measures.
- 9.5 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 9.
- 9.6 The Customer acknowledges that Footsteps is reliant on the Customer for direction as to the extent to which Footsteps is entitled to use and process the Personal Data. Consequently, Footsteps will not be liable for any claim brought by a Data Subject arising from any action or omission by Footsteps, to the extent that such action or omission resulted directly from the Customer's instructions.
- 9.7 Footsteps may authorise a third party ("**subcontractor**") to process the Personal Data with the prior agreement of the Customer provided that the subcontractors' contract:
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- 9.7.1 is on terms which are substantially the same as those set out in this Contract;
and
- 9.7.2 terminates automatically on termination of this Contract for any reason.
- 9.8 Footsteps will assist the Customer by providing subject access and allowing data subjects to exercise their rights under GDPR.
- 9.9 Footsteps will assist the Customer in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments.
- 9.10 Footsteps will delete or return to the Customer (at the option of the Customer) all personal data following termination of the Contract.
- 9.11 Footsteps will provide the Customer with whatever information they need to ensure that Footsteps and the Customer are both meeting their GDPR Article 28 obligations, and tell the Customer immediately if they are asked to do something infringing the GDPR or other data protection law of the EU or a member state.

10. ACCEPTANCE AND DEFECTIVE PRODUCTS AND SERVICES

- 10.1 The Customer may reject any Products and Services delivered to it that do not comply with the Specification, provided that:
- 10.1.1 notice of rejection is given to Footsteps:
- (a) in the case of a defect that is apparent on normal visual inspection, within seven (7) Business Days of Delivery;
 - (b) in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and
- 10.1.2 none of the events listed in clause 10.3 apply.

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- 10.2 If the Customer fails to give notice of rejection in accordance with clause 10.1, it shall be deemed to have accepted the Products and Services.
- 10.3 Footsteps shall not be liable for failure to comply with a warranty in any of the following events:
- 10.3.1 the Customer makes any further use of those Products and/or Services after giving notice in accordance with clause 10.1;
 - 10.3.2 the defect arises because the Customer failed to follow Footsteps' oral or written instructions for the storage, commissioning, installation, use and maintenance of the Products and/or Services or (if there are none) good trade practice regarding the same;
 - 10.3.3 the defect arises as a result of Footsteps following any drawing, design or Specification supplied by the Customer;
 - 10.3.4 the Customer or a third party alters or repairs those Products and/or Services without the written consent of Footsteps;
 - 10.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 10.3.6 the Products and/or Services differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 10.4 Except where the defective Products and/or Services are supplied by third parties as set out in clause 2.13, and in any other case, subject to clauses 10.2 and 10.3, if the Customer rejects Products and/or Services under clause 10.1 then the Customer shall be entitled to:
- 10.4.1 require Footsteps to repair or replace the rejected Products and/or Services;
or
 - 10.4.2 require Footsteps to repay the price of the rejected Products and/or Services in full.
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- 10.5 Once Footsteps has complied with the Customer's request, it shall have no further liability to the Customer for the rejected Products' and/or Services' failure to comply with the Specification.
- 10.6 The terms of this Contract shall apply to any repaired or replacement Products and/or Services supplied by Footsteps.
- 10.7 If the parties dispute whether any Products and/or Services comply with the Specification, either party may refer the matter to Dispute Resolution for determination in accordance with clause 14.12.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in this Contract shall limit or exclude Footsteps' liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - 11.1.2 fraud or fraudulent misrepresentation; and
 - 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 11.2 Subject to clause 11.1, Footsteps shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract for:
- 11.2.1 loss of profits;
 - 11.2.2 loss of revenue;
 - 11.2.3 loss of sales or business;
 - 11.2.4 loss of agreements or contracts;
 - 11.2.5 loss of anticipated savings;
 - 11.2.6 loss of use or corruption of software, the Website, data or information;

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- 11.2.7 loss of or damage to goodwill; and
- 11.2.8 any indirect or consequential loss.
- 11.3 Subject to clause 11.1 and clause 11.2, Footsteps' total aggregate liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising directly under or in connection with this Contract shall be limited to £125,000..
- 11.4 The conditions implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.
- 11.5 Footsteps will not be held liable for any viruses uploaded to the Website by third parties or by the Customer's employees or agents after its publication to the internet (save for third parties contracted or sub-contracted by Footsteps for the purpose of support services).
- 11.6 Footsteps shall not be liable under this Contract if, as a result of compliance with laws under clause 2.16.5, it is in breach of any of its other obligations under this Contract.
- 11.7 If Footsteps' performance of its obligations under this Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Footsteps shall:
- 11.7.1 not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- 11.7.2 be entitled to payment of the Charges despite any such prevention or delay; and
- 11.7.3 be entitled to recover any additional costs, charges or losses Footsteps sustains or incurs that arise directly or indirectly from such prevention or delay.
- 11.8 Footsteps will not be liable for any functionality or design failures directly or indirectly due to third party causes, user error, Customer error, the Specification, unforeseen
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errors, browser compatibility, server compatibility and changes to third party software both during and after the term of this Contract.

12. TERMINATION

- 12.1 This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other not less than two weeks' written notice to terminate.
- 12.2 This Contract will automatically terminate the day after the Deliverables were delivered to the customer, provided always that there are no disputes between the parties or outstanding invoices on that date, in which case, the Contract will continue until actively terminated by either party.
- 12.3 Nothing in this agreement shall restrict or limit either party's general obligation at law to mitigate any losses it may suffer or incur as a result of an event that may give rise to a claim under this Contract.
- 12.4 Without affecting any other right or remedy available to it, either party to this Contract may terminate it with immediate effect by giving written notice to the other party if:
- 12.4.1 the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 12.4.2 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;
 - 12.4.3 the other party suspends, or threatens to suspend, payment of its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 12.4.4 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 any of its creditors;

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- 12.4.5 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 (being a company);
- 12.4.6 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;
- 12.4.7 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;
- 12.4.8 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 12.4.9 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 14 days;
- 12.4.10 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 clause 12.4.4 to clause 12.4.9 (inclusive);
or
- 12.4.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 12.5 Without affecting any other right or remedy available to it, Footsteps may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 12.6 On termination of this Contract for whatever reason:

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- 12.6.1 the Customer shall immediately pay to Footsteps all of Footsteps' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Footsteps may submit an invoice pro rata for the Services supplied up the date of termination, which shall be payable immediately on receipt;
- 12.6.2 termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination;
- 12.6.3 Footsteps shall on request return any of the Customer Materials not used up in the provision of the Services; and
- 12.6.4 the following clauses shall continue in force:
- (a) clause 1 (Interpretation);
 - (b) clause 6 (Intellectual Property Rights);
 - (c) Clause 10 (Defective Products and Services);
 - (d) clause 11 (Limitation of liability);
 - (e) clause 12.6 (Consequences of termination);
 - (f) clause 14.3 (Confidentiality);
 - (g) clause 14.7 (Waiver);
 - (h) clause 14.8 (Severance);
 - (i) clause 14.12 (Dispute Resolution Procedure);
 - (j) clause 14.13 (Governing law); and
 - (k) clause 14.14 (Jurisdiction), and

12.6.5 erase all the other party's Confidential Information from its computer systems (to the extent possible).

13. FORCE MAJEURE

13.1 "**Force Majeure Event**" means any circumstance not within a party's reasonable control including, without limitation:

13.1.1 acts of God, flood, drought, earthquake or other natural disaster;

13.1.2 epidemic or pandemic;

13.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

13.1.4 nuclear, chemical or biological contamination or sonic boom;

13.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

13.1.6 collapse of buildings, fire, explosion or accident;

13.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);

13.1.8 non-performance by suppliers or subcontractors; and

13.1.9 interruption or failure of utility service.

13.2 Provided it has complied with clause 13.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

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- 13.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 13.4 The Affected Party shall:
- 13.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 21 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Contract; and
- 13.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 13.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this Contract by giving 2 weeks' written notice to the Affected Party.

14. GENERAL

14.1 Assignment and other dealings.

14.1.1 The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without Footsteps' prior written consent.

14.1.2 Footsteps may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this Contract.

14.2 **Rights and remedies.** The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

14.3 Confidentiality.

14.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 14.3.2. For the purposes of this clause, "**group**" means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

14.3.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.3; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Contract.

14.4 **Entire agreement.**

14.4.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.4.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

14.5 **No partnership or agency.**

14.5.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

14.5.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

14.6 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.7 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

14.7.1 waive that or any other right or remedy; or

14.7.2 prevent or restrict the further exercise of that or any other right or remedy.

14.8 **Severance.** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

14.9 **Further assurance.** At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Contract.

14.10 **Notices.**

14.10.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered

office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.

14.10.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.10.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

14.10.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.11 **Third party rights.** No one other than a party to this Contract shall have any right to enforce any of its terms.

14.12 **Dispute resolution procedure.**

14.12.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in this Contract, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Managing Director of the Customer and Managing Director of Footsteps shall attempt in good faith to resolve the Dispute;
- (b) if the Managing Director of the Customer and Managing Director of Footsteps are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be

nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("**ADR notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR notice.

14.12.2 If the Dispute is not resolved within 14 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 14 days, or the mediation terminates before the expiration of the said period of 14 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 14.13 and 14.14.

14.13 **Governing law.** This Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

14.14 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

SCHEDULE 1– Service Definitions

Website Development

Specification – Written specification of website with planned functionality or basic overview of website

Wireframe – Plan of website with all sections and pages

Web Design – ‘Flat’ Design (in Photoshop/or displayed as an image in a browser) of intended Home Page design. May include ‘deeper’ pages

Website Programming – The creation or manipulation of code for websites including but not limited to, HTML, JavaScript, CSS, PHP, jQuery

Template Build – Building of website framework

Website Platforms - Joomla, WordPress

Database – Set up and integration and manipulation of databases, including but not limited to MySQL, Microsoft SQL

Website Delivery – Final functioning website built for client approval. Tested on multiple popular platforms (e.g. Internet Explorer, Safari, Firefox, Edge), Desktop and portable devices. On currently supported versions at time of going live. Any specific Platform, Desktop or portable devices requirements can be discussed and tested on client request

Website Testing – Initial tests by Footsteps prior to Customer testing and sign off

Website Auditing – An overview of an existing website with suggestions on improvements both in Design and Functionality

Third Party Plugins – Software installed onto the website that is created by a third party and licenced for use on the website to add functionality to the core code of the website platform

Custom Plugins – Software installed on the website, programmed by Footsteps to add functionality to the core code of the website platform

Google Maps API – Google Maps are installed using an API key. We will install the map on the customers behalf under the Footsteps Design Google Map API Licence. If we determine the Google Map will require its' own licence (this will be determined using Google's API usage quotas), we will set up the Google Map in the name of the company (customer) whose website we are working on. This will require the use of the customers credit card to validate the API key. Footsteps Design Limited may require the Google Map API to be set up in the company name of the customer at any time (this will be determined using Google's API usage quotas) and transferred away from the Footsteps Licence. This will require the use of the customers credit card to validate the API key.

Stock Images – Images bought from a stock library for use on client's behalf

Mobile optimisation – Website built to function on portable devices. Tested on multiple popular platforms (e.g. Tablet and Smartphone). On currently supported versions at time of going live. Any specific portable devices requirements can be discussed and tested on client request

On site SEO - Including but not limited to: Headings, Descriptions, Titles, Content management, link building

Local SEO – Including but not limited to: Research and sign up to local directories

Copy Writing – Writing of content for website. Rewriting of client-supplied content

Ecommerce – Programming to utilise a third-party payment gateway such as Sage Pay or PayPal.

Google AdWords – Google advertising set up and management and or audit and changes to existing Google account

Social Media – Campaign set up (such as Facebook or Twitter) and management

Website Maintenance – Calendar monthly updates to basic website platforms Core Code and plugins. Back up of website to offline location, update of any new updated code, second back up of website. Spot check testing of website

Major Core Code and plugin changes – There may be reason to update a website as a result of large core code changes. This will be notified to the customer with cost implications

CMS Training – Basic training on the content management of the website

Miscellaneous programming issues – Errors, bugs, anomalies, appearing in code that require investigation and programming in order to allow website to function correctly

Website Hacking – A direct attack on a website requiring action from Footsteps to investigate the hack, locate problem/s, delete all cases, test and reinstate website. Includes Client-testing. A website hack can resurface if all cases of issues are not located. Footsteps will make every effort to find these but cannot be held responsible if further work is required as a result of a Hack

Hosting – Supply of hosting packages. Footsteps set up hosting of website in clients' name and supply on annual basis. All responsibility for hosting lies with the third-party Hosting provider

Domain Names – Footsteps will buy domains on behalf of clients on annual basis or transfer domains over to a provider. All responsibility for Domain Hosting lies with the third-party Domain Provider.

Graphic Design

Design – Initial design style in Photoshop. Agreed options bespoke to client choice

Product Design – Design style utilised into chosen product/s. Supplied as file from Photoshop

Design Supply – Artwork made ready in chosen format

Logo Design/Branding – Design of Logo in Photoshop. Agreed options bespoke to customers choice

Design Changes – Prior - agreed amount of changes client requires to achieve result

Print Quote – Cost of printed product from third-party suppliers

Print Supply – Artwork made ready in chosen format for third-party print suppliers, managed from design to print including delivery of final printed products



Stock Images – Images bought from a stock library for use on customers behalf