

SAMPLE

WEBSITE DESIGN AND DEVELOPMENT AGREEMENT

THIS AGREEMENT is made the

BETWEEN:

- (1) <<Name of Developer>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of <<Name of Developer>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] <<insert Address>> ("the Developer")
- (2) <<Name of Client>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of <<Name of Client>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] <<insert Address>> ("the Client")

WHEREAS:

- (1) The Developer carries on the business of website design and development and related services.
- (2) The Client wishes to engage the Developer to provide website design and development and related services on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them:

"Acceptance Retests"

to be carried out in the event of a failure as set out in Clause 5 and Schedule 2;

"Acceptance Tests"

to be carried out on the Website as set out in Clause 5 and Schedule 2;

"Business Day"

any day other than Saturday or Sunday) on which the Client's premises are open for their full range of services at <<insert location>>;

"Client Site Materials"

any content provided by the Client to be incorporated into the Website;

"Commencement Date"

the date of the Agreement>>;

"Confidential Information"

any information disclosed by either Party, information which is confidential in law or by the other Party pursuant to this Agreement (whether orally or in writing, in any form or medium, and whether or not the information is expressly stated to be confidential or

**“Data Protection
Legislation”**

**“personal data”
“data subject”
“data controller”
“data processor” and
“personal data breach”**

“Defect Report”

“Defect”

“Developer Site Material”

**“Intellectual Property
Rights”**

“Non-Developer Defect”

“Project Fees”

“Project Manager”

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the legislation in force from time to time in the United Kingdom applicable to data protection including, but not limited to, the current EU law version of the General Data Protection Regulation ((EU) 2016/679), as it applies in England and Wales, Scotland, and Northern Ireland (and by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made under it); the Privacy and Electronic Communications Regulations 2003 as amended;

the meaning defined in Article 4 of the

Defect Report compiled by the Developer in accordance with Clause 5.3;

any defect in the Website that causes it to fail to pass Acceptance Tests;

any content provided or created by the Client and incorporated into the Website;

rights to inventions, copyright and related rights (including moral rights), trade marks, design rights, domain names, rights in get-up and goodwill and the right to sue for passing off, rights in computer software, rights to use and protect the confidential information (including trade secrets) and all other intellectual property rights whether registered or unregistered, patents and rights to apply for patents, renewals or extensions of, and rights in, such rights and all similar or analogous forms or protection which either exist now or in the future in any part of

any defect in the Website that causes it to fail to pass Acceptance Tests that has been caused by the omission of the Client, or by any negligence of the Client for whom the Developer shall not be responsible;

the fees to be paid by the Client to the Developer for the Developer's Services, as agreed by the Parties in Schedule 3;

the Project Manager appointed by either Party in accordance with Clause 1;

“Project Milestone”

“Project Specification”

“Retest Period”

“Services”

“Testing Period”

“Website”

1.2 Unless the context of

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2. **Project Specification and**

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setting out in detail the work which
the Developer to perform, attached

thin which the Acceptance Retests
as specified in sub-Clause 5.7;

design and development services
the Developer to the Client pursuant

within which the Acceptance Tests
as specified in sub-Clause 5.1;

at <<insert URL>>] to be designed
the Developer pursuant to this

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- 2.3 The Client may request amendments to the Project Specification. Any proposed amendments shall be in writing.
- 2.4 Within <<insert period>> of receipt of a request or proposal, the Developer shall notify the Client in writing of the amendments to be accommodated, including the effect on the Project Specification.
- 2.5 Within <<insert period>> of receipt of the Developer's notice of amendments, the Client shall notify the Developer in writing of its amendments to the Project Fees and Project Specification with the Developer to discuss the amendments.
- 2.6 The Client Site Materials shall be provided by the Client in accordance with the Project Specification. The Client shall be fully responsible for the Client Site Materials, their accuracy, and completeness thereof and shall indemnify the Developer for any and all damages, losses, and expenses arising as a result of the Client Site Materials or proceedings on the grounds that the Client Site Materials are material that is unlawful or otherwise offensive (including but not limited to, material that is obscene, defamatory, threatening, incites violence, or that breaches the Intellectual Property rights of any third party).
3. **Project Management and Reporting**
- 3.1 Each Party shall appoint a Project Manager who shall be responsible for liaising with the other Party under this Agreement. Each Project Manager shall have the authority and experience of all relevant matters, and the authority by whom they are appointed.
- 3.2 The Developer shall submit regular progress reports detailing the progress of the design and development of the Website. In particular, such reports shall indicate any important matters to the Client's attention.
4. **[Third-Party Software Licences]**
- 4.1 The Third-Party Software Licences shall be supplied and incorporated into the Website in accordance with the applicable software licence agreement[s].
- 4.2 The licence fee[s] payable for the Third-Party Software shall form a part of the Project Fees payable by the Client as set out in Schedule 3.]
5. **Development, Testing, and Acceptance**
- 5.1 Upon completion of the development of the Website by the Developer in accordance with the Project Specification and Project Milestone <<insert relevant milestone>>, the Client shall have a <<insert duration>> Business Days period during which it shall carry out the Acceptance Tests of the Website as set out in Schedule 2.
- 5.2 In the event that the Acceptance Tests are not passed, the Client shall inform the Developer at the earliest opportunity of all Defects in writing.
- 5.3 Upon receipt by the Client of the results of the Acceptance Tests under sub-Clause 5.2, the Developer shall rectify the Defects within <<insert duration>> Business Days.

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- to compile the Client Specification. The Developer shall provide the Client with a Defect Report by the end of that period.
- 5.4 Upon receipt by the Client of the Defect Report, the Parties shall agree upon a mutually acceptable schedule for the correction of Defects and to agree upon solutions for each solution.
- 5.5 In the event that a Defect is caused by an act or omission of the Client or a party associated with the Client for which such a Non-Developer Defect shall not be considered as one of the Acceptance Tests. If only one Defect on the Website shall be deemed to have been caused by the Client, the provisions of sub-Clause 5.9 shall apply.
- 5.6 Defects shall be remedied by the Developer at no additional cost to the Client. The Client may request the Developer to remedy any Non-Developer Defects, however the Developer shall have the right to charge the Client in full for such remedial work at current rates for such work and to require full payment for such work.
- 5.7 Where applicable, the Client shall have the right to require the Developer of any and all necessary work to remedy Defects during the Acceptance Tests, the Business Day Retest Period during which it shall carry out the necessary work on the Website (or the affected parts thereof, as applicable) in accordance with Schedule 2.
- 5.8 In the event that the Client does not accept the results of the Acceptance Tests, the Client shall have the following options without prejudice to the Client's other rights and remedies:
- 5.8.1 to require the Developer to remedy the remaining Defects and to agree upon a suitable schedule for the completion of that remedial work and to agree upon a suitable deadline for the completion of that remedial work. If the Website fails the Acceptance Retests, the Client may require the repetition of the Acceptance Tests. If the Website fails the Acceptance Retests, the Client may proceed under sub-Clauses 5.8.2 or 5.8.3.
- 5.8.2 to accept the results of the Acceptance Tests, subject to a reasonable reduction in the fee payable to the Developer which shall be agreed upon in writing within <<insert period>> of the Acceptance Retests. If the Website fails the Acceptance Retests, the Client may proceed under sub-Clause 5.8.3.
- 5.8.3 to reject the results of the Acceptance Tests and to terminate this Agreement immediately with full refund to the Client any and all sums already paid to the Developer under this Agreement [immediately].
- 5.9 The Website shall be deemed to be accepted when all Acceptance Tests and (where applicable) Acceptance Retests have been passed and no Defects remain (except those accepted by the Client under this Agreement) upon successful completion of the Project Acceptance Tests, and the Client shall return to the Developer without undue delay.

5.10 [Immediately upon completion of the Website] or [within a period of] acceptance of the completed Website by the Client, the Developer shall deliver the completed Website to the Client by the method specified in the Agreement.

6. Fees and Payment

6.1 The Client shall pay the Project Fees, calculated in accordance with Schedule 1, to the Developer within the period of receipt of the Developer's invoice.

6.2 Any and all sums payable by the Client to the Developer shall be [exclusive] OR [inclusive] of VAT.

6.3 If the Client fails to pay the Project Fees by the due date for payment, then, in addition to the remedies (including interest) available to the Developer under Clause 13), the Client shall pay interest on the outstanding amount from the due date for payment until the date of payment or after judgment.

6.4 Interest under sub-clause 6.3 shall be calculated on a daily basis at the rate of <<insert percentage>>% per annum, or the rate of England's base rate from time to time, and at <<insert percentage>>% per annum for any period when that base rate is below 0%.

7. Intellectual Property

7.1 The Client warrants that they own all Intellectual Property rights in the Client Site Materials supplied by them to the Developer, and that they have obtained all necessary permissions and licences from third parties, licensors, as appropriate, to use all Client Site Materials and to assign the same to the Developer at all times.

7.2 The Developer warrants that they own all Intellectual Property rights in the Developer Site Materials supplied to the Client, and that they have obtained all necessary permissions and licences from third parties, licensors, as appropriate, to use all Developer Site Materials and to assign the same to the Client at all times.

7.3 The Developer shall assign to the Client all Intellectual Property Rights in the Developer Site Materials supplied to the Client. If the Project Fees are paid in full by the Client, then, upon receipt by the Client of the Developer Site Materials, the Developer shall assign the same to the Client immediately, and the Parties shall execute all documents necessary to effect such assignment.

7.4 The Developer shall indemnify the Client against all damages, losses, and expenses arising out of or in connection with the infringement of Intellectual Property Rights by any part of the Website created by the Developer provided that the Client:

7.4.1 promptly notifies the Developer of the claim or proceedings;

7.4.2 makes no admission of liability without the Developer's prior written consent;

7.4.3 provides the Developer with all information and assistance that the Developer may reasonably require to defend or settle the claim or proceedings;

7.4.4 gives the Developer the authority to defend or settle the claim or proceedings on behalf of the Client.

7.5 The Client shall indemnify the Developer against all damages, losses, and expenses arising out of or in connection with the infringement of Intellectual Property Rights by any part of the Website created by the Client.

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7.7 The Developer sh
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Website [, or use
anything substantial
of any kind for any t

t Site Materials, any Developer
Agreement, [or] any part of the
look and feel of the Website or
n of any website or other material

8. Warranties

8.1 Each Party hereby
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shall be free of errors, viruses, and
in accordance with the Project
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event that the Website does not
specification, the Developer shall
Project Specification without undue

8.4 The warranty provid
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all not apply to the extent that any
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9. Liability

9.1 Neither Party shall
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for any loss of profit, anticipated
will, or business opportunity, or for
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9.2 Nothing in this Agr
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Party's liability under sub-Clause
hereunder shall count towards the
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connection with the Agreement (including negligence), or otherwise in connection with the Agreement.

in contract, tort (including negligence), or otherwise in connection with the Agreement. <<insert sum>>.

- 9.4 Nothing in this Agreement shall limit or personal injury or death claims or terms implied by Section 2 of the Supply of Goods and Services Act 1982; the deliberate or wilful misconduct of that Party or its agents, or sub-contractors; or for any other form of liability.

include either Party's liability for death or personal injury or death claims; negligence; fraud; any breach of the Supply of Goods and Services Act 1979 or by Section 2 of the Supply of Goods and Services Act 1982; the deliberate or wilful misconduct of that Party or its agents, or sub-contractors; or for any other form of liability or excluded by law.

10. Data Protection

- 10.1 All personal data that is collected, stored, processed, or otherwise used in connection with this Agreement shall be collected, stored, processed, or otherwise used in accordance with the provisions of the Data Protection Legislation. This Agreement shall relieve either Party of any obligation to comply with the Data Protection Legislation or replace any obligations set out in the Data Protection Legislation.
- 10.2 Complete details of the processing, storage, and retention of personal data in connection with this Agreement, the purposes for which personal data is used, the Parties' obligations in connection with such personal data, details of the sharing (where applicable) of such personal data, details of notices or policies are available in the Parties' Data Protection Policies [available from <<insert name of notices or policies>> attached in Schedules 5 and 6].

in connection with this Agreement shall be collected, stored, processed, or otherwise used in accordance with the provisions of the Data Protection Legislation. This Agreement shall relieve either Party of any obligation to comply with the Data Protection Legislation or replace any obligations set out in the Data Protection Legislation.

processing, storage, and retention of personal data in connection with this Agreement, the purposes for which personal data is used, the Parties' obligations in connection with such personal data, details of the sharing (where applicable) of such personal data, details of notices or policies are available in the Parties' Data Protection Policies [available from <<insert name of notices or policies>> attached in Schedules 5 and 6].

11. Data Processing

- 11.1 [All personal data that is collected, stored, processed, or otherwise used in connection with this Agreement shall be collected, stored, processed, or otherwise used in accordance with the terms of the Data Processing Agreement between the Parties on <<insert date>>.]
- OR**
- 11.1 [The Parties hereby agree to comply with all applicable data protection requirements. This Clause shall not relieve the Parties of their obligations set out in the Data Protection Legislation to move or replace any of those obligations.]
- 11.2 For the purposes of the Data Protection Legislation and for this Clause 11, the Client is the data controller and the Developer is the data processor.
- 11.3 The type(s) of personal data, the scope, nature, and duration of the processing are set out in the Data Processing Agreement [OR [categories] of data subject, the scope, nature, and duration of the processing are set out in the Data Processing Agreement].
- 11.4 The Client shall ensure that all necessary consents and notices are obtained from the data subjects in connection with the processing of personal data to the Developer for the purposes described in the Data Processing Agreement.
- 11.5 The Developer shall ensure that all necessary consents and notices are obtained from the data subjects in connection with the processing of personal data to the Developer for the purposes described in the Data Processing Agreement.

Developer on behalf of the Client shall ensure that all necessary consents and notices are obtained from the data subjects in connection with the processing of personal data to the Developer for the purposes described in the Data Processing Agreement.

both comply with all applicable data protection requirements. This Clause shall not relieve the Parties of their obligations set out in the Data Protection Legislation to move or replace any of those obligations.]

Legislation and for this Clause 11, the Client is the data controller and the Developer is the data processor.

[OR [categories] of data subject, the scope, nature, and duration of the processing are set out in the Data Processing Agreement].

All necessary consents and notices are obtained from the data subjects in connection with the processing of personal data to the Developer for the purposes described in the Data Processing Agreement.

personal data processed by it in connection with the Agreement:

the written instructions of the Client shall ensure that all necessary consents and notices are obtained from the data subjects in connection with the processing of personal data to the Developer for the purposes described in the Data Processing Agreement.

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- 11.5.2 ensure that appropriate technical and organisational measures (a) to protect the personal data from unauthorized access, including accidental loss, damage or destruction. (b) be proportionate to the potential harm resulting from the processing of the data taking into account the current state of the art in technology and of implementing those measures. Measures to be taken are set out in Schedule 7;
- 11.5.3 ensure that employees with access to the personal data (whether or not they are contractors or otherwise) are contractually obliged to keep the data confidential;
- 11.5.4 not transfer personal data outside of the UK without the prior written consent of the Client, only if the following conditions are satisfied:
- a) the Client and the Developer have provided suitable safeguards for the transfer;
 - b) the affected data subjects have enforceable rights and effective legal remedies;
 - c) the Developer complies with obligations under the Data Protection Legislation, to ensure an equivalent level of protection to any and all personal data transferred;
 - d) the Developer complies with reasonable instructions given in advance by the Client in relation to the processing of the personal data.
- 11.5.5 assist the Client in responding to any and all requests from data subjects ensuring its compliance with the Data Protection Legislation in respect to security, breach notifications, and consultations with supervisory authorities or the Information Commissioner about not limited to, the Information Commissioner;
- 11.5.6 notify the Client on becoming aware of a personal data breach;
- 11.5.7 on the termination of the processing of personal data, return all personal data to the Client or delete (or otherwise dispose of) or destroy all copies thereof to the Client on request, unless it is required to retain any of the data for legal reasons;
- 11.5.8 maintain complete records of all processing activities and technical and organisational measures implemented necessary to ensure compliance with clause 11 and to allow for audits by the Client and to provide the same to the Client on request.
- 11.6 [The Developer shall comply with its obligations with respect to the processing of personal data in accordance with the Agreement.]
- OR**
- 11.6 [The Developer shall comply with its obligations with respect to the processing of personal data in accordance with the Agreement without the prior written consent of the Client. The Developer appoints such a sub-processor, which shall be subject to the same obligations as are imposed on the sub-processor, which shall be subject to the same obligations as are imposed on the Developer.]
- 11.6.1 enter into a sub-processing agreement with the sub-processor, which shall impose upon the sub-processor the same obligations as are imposed on the Developer.

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lies fully with its obligations under
on Legislation.]

acts its obligations with respect to Clause 11.6, as between the Client remain fully liable for all acts and

last <<insert period>> notice, alter cable data processing clauses or certification scheme. Such terms attachment to this Agreement.]]

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provided by sub-Clause 12.2 or as
small, at all times during the term of
[> years] after its termination or

Information;

tion to any other party;

for any purpose other than as
terms of this Agreement;

any way, or part with possession of

officers, employees, agents, sub-
which, if done by that Party, would
Clauses 12.1.1 to 12.1.4 above.

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party or body in question that the
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der sub-Clause 12.2.1(b) or any
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13.2.3 an encumbrance, or where the other Party is a company, a charge, of any of the property or assets of that other Party

13.2.4 the other Party is in a process of entering into an arrangement with its creditors or being a company subject to an administration order (within the meaning of section 86);

13.2.5 the other Party or firm, has a bankruptcy order made against it, or goes into liquidation (except for the purposes of reconstruction or re-construction);

13.2.7 that other Pa [REDACTED] to cease, to carry on business; or

The termination or expiration of this Agreement shall be without prejudice to any rights, remedies, obligations or liabilities which have already accrued to either

13.4 On the termination of [REDACTED] nt:

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13.4.1 all licences
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14. Force Majeure

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15. Audit

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16. No Waiver

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of its rights under this Agreement
waiver by either Party of a breach
to be a waiver of any subsequent

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17. **Further Assurance**

Each Party shall execute all deeds, documents and things as may be necessary to carry out the Agreement into full force and effect.

18. **Costs**

Subject to any provisions to the contrary, each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

19. **Assignment and Sub-Contracting**

19.1 [Subject to sub-Clauses 11.6 and 19.2, this Agreement is personal to the Parties. Neither Party shall assign, charge (otherwise than by way of a floating charge), sub-contract or subcontract any of its rights hereunder, or sub-contract or subcontract any of its obligations hereunder without the written consent of the other Party, which consent shall not be unreasonably withheld.

19.2 [[Subject to sub-Clauses 11.6 and 19.2, this Agreement is personal to the Parties. Neither Party shall assign, charge (otherwise than by way of a floating charge), sub-contract or subcontract any of its rights hereunder, or sub-contract or subcontract any of its obligations hereunder without the written consent of the other Party, which consent shall not be unreasonably withheld.

20. **Relationship of the Parties**

Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, agency, or other relationship between the Parties other than the contractual relationship created by this Agreement.

21. **Third Party Rights**

21.1 Unless expressly stated otherwise, nothing in this Agreement is intended to confer rights on any third party (Rights of Third Parties) Act 1999.

21.2 Subject to this Clause, all rights conferred by this Agreement shall continue and be binding on the transferee, successors and assigns of the Party as required.

22. **Notices**

22.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, an authorised officer of the Party giving the notice.

22.2 Notices shall be deemed to have been given:

22.2.1 when delivered to the recipient by hand, or by registered mail, or by courier or other messenger (including overnight delivery) at the registered office of the recipient; or

22.2.2 when sent, by post, fax, e-mail and a successful transmission is generated; or

22.2.3 on the fifth day of the month following mailing, if mailed by national ordinary mail

22.2.4 on the tenth day of the month following mailing, if mailed by airmail, postage prepaid

In each case notice shall be given to the most recent address, e-mail address, or facsimile address of the other Party.

g mailing, if mailed by national

g mailing, if mailed by airmail,

to the most recent address, e-mail
other Party.

23. Entire Agreement

23.1 [Subject to Clause 23.2] This Agreement contains the entire agreement between the Parties to its subject matter and may not be modified except by a written instrument signed by the duly authorised representatives of the Parties.

Agreement contains the entire
to its subject matter and may not
ing signed by the duly authorised

23.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty, or other provision (made innocently or negligently) other than those expressly provided in this Agreement.

to this Agreement, it does not rely
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y provided in this Agreement.

24. Counterparts

This Agreement may be executed in counterparts by the Parties to it on separate copies, each of which shall be an original, but all of which when so executed and delivered together shall constitute one and the same instrument.

number of counterparts and by the
n when so executed and delivered
ther shall constitute one and the

25. Severance

In the event that one or more provisions of this Agreement are found to be unlawful, invalid or otherwise unenforceable, those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

of this Agreement is found to be
hose provision(s) shall be deemed
The remainder of this Agreement

26. Law and Jurisdiction

26.1 This Agreement (including any dispute, controversy or claim arising therefrom or associated with its performance or non-performance) shall be governed by, and construed in accordance with, the law of England and Wales.

ual matters and obligations arising
e governed by, and construed in
ales.

26.2 Any dispute, controversy or claim between the Parties relating to this Agreement (including any dispute, controversy or claim arising therefrom or associated with its performance or non-performance) shall be referred to and determined by the courts of England and Wales.

aim between the Parties relating to
ual matters and obligations arising
within the jurisdiction of the courts

SIGNED for and on behalf of the Defendant
<<Name and Title of person signing>>

Authorised Signature

Date: _____

SIGNED for and on behalf of the Client
<<Name and Title of person signing>>

Authorised Signature

Date: _____

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Project Specification

<<Insert Project Specification>>

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Acceptance Tests

<<Insert details of Acceptance Tests

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Project Fees

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Third-Party Software

<<Insert details of Third-Party Software>>

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Developer's Data Protection <insert name>
<<Attach Notice or Policy>>]

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Client's Data Protection <<insert Client Name>>
<<Attach Notice or Policy>>]

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1. Data Processing

Scope

<<Insert description of the scope of processing to be carried out>>.

Nature

<<Insert description of the nature of processing to be carried out>>.

Purpose

<<Insert description of the purpose of processing to be carried out>>.

Duration

<<Insert details of the duration of the processing>>.

2. Types of Personal Data

<<List the types of personal data to be processed>>.

3. Categories of Data Subject

<<List the categories of data subject>>.

4. Organisational and Technical Measures

<<Describe the organisational and technical measures to be implemented as referenced in 11.5.2>>.]

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