



## ARTOFDATA WEB SERVICES AGREEMENT

This Web Services Agreement (together with its signed Schedule, the "Agreement") is dated [TODAYS DATE] (the "Effective Date") and is made between by and between **ArtofData.com Limited** whose principal place of business is at **47 Brooksby Road Tilehurst Reading RG31 6LZ** ("Us", "We", "Our"), and [Client], whose principal place of business is at **YOUR ADDRESS** ("You", "Your") (together referred to as "Both of Us").

### BOTH OF US HEREBY AGREE AS FOLLOWS

#### 1 Definitions.

The following terms have the meanings set forth below whenever they are used in this Agreement:

"Acceptance" means the acceptance of the Web Site by You in accordance with the provisions of the Specification, and "Accepted" shall be construed accordingly.

"Acceptance Period" means the time during which You may test the Web Site for the purpose of determining whether it shall pass Acceptance, as defined in the Specification.

"Branding Materials" means those trademarks, logos, artworks, photographic images and other visual or audio materials provided by You to Us for incorporation into the Web Site as set out in the Specification.

"CMS" means Our content management system developed by Us and adapted for use by You in the management of the Web Site.

"Commencement Date" means the commencement date specified in Original quote hereto.

"Content" means text and images to be included in the Web Site.

"Delivery Date" means the estimated date on which We shall first make available the Web Site.

"New Content" means Content to be developed or compiled by Us under this Agreement.

"Pitch" means Our pitch to You setting out Our high-level vision of the design and functionality of the Web Site, the timescales in which We expect to be able to develop the Web Site and the Web Services Fee, attached hereto at Original quote.

"Problem" means the failure of the Web Site to perform in accordance with a reasonable interpretation of the Specification or the failure of the Web Services to comply with the Pitch.

"Specification" means the document prepared by Us based on the Pitch and setting out the design and functionality of the Web Site, Your Content and New Content to be attached hereto at Original Quote Technical Specification when agreed in accordance with Clause 2.1.

"Web Services" means those services provided by Us in relation to development of the Web



Site and access to the Web Site by You and Your Clients, including hosting of the Web Site and support of the Web Site as further set out in the Specification.

“Web Services Fee” means the fee payable by You to Us as set out in Original quote hereto and in accordance with the provisions of Clause 8 below.

“Web Site” means the new web site developed by Us under this Agreement in accordance with the Specification and incorporating the CMS, Your Content, Branding Materials and the New Content.

“Your Content” means Content supplied by You.

## **2 Specification and Supply of Web Site**

- 2.1 On signature of this Agreement We shall prepare the Specification, based on the Pitch. You shall review the Specification and notify Us within ten (10) working days of any changes that You require. In the event that these impact on either the target Delivery Date or the Web Services Fee, We shall notify You of such in writing at the time of submitting the updated Specification and Both of Us will agree on any updates to the Delivery Date and Web Services Fee prior to continuing with the development of the Web Site.
- 2.2 If We do not receive any notification from You within ten (10) working days of Our submission of the Specification of any required changes or objections to changes in the Delivery Date or the Web Services Fee set out therein, You shall be deemed to have accepted the Specification, the Delivery Date and the Web Services Fee.
- 2.3 We agree to develop subject to the terms of this Agreement the New Content and the Web Site as set out in the Specification, incorporating Your Content and the Branding Materials.
- 2.4 The Delivery Date given in Original quote is given in good faith but because of the nature of work undertaken it must be considered to be an estimate only. While We shall make reasonable endeavours to maintain the Delivery Date quoted, meeting such Delivery Date shall not constitute the essence of this Agreement.
- 2.5 You may request additions or amendments to the Web Site and the New Content. We may also give notice to You that a change in circumstances prompted by You constitutes a request for modification to the Specification even though no formal request for modification has been issued by You. In response to such requests We shall supply You with a written proposal including the specification for the work, price and approximate timescales for delivery. Once You have accepted such proposal in writing, it shall be attached to this Agreement as an Addendum to the Specification and shall be delivered subject to the terms and conditions of this Agreement.

## **3 Supply of Web Services**

- 3.1 For the duration of this Agreement and subject to the terms and conditions of this Agreement, We hereby grant to You a personal, non-transferable right to use the Web Site and the CMS as hosted by Us in accordance with this Clause 3.
- 3.2 We agree to host the Web Site on Our computer facilities or those of Our subcontractors for the term of this Agreement.
- 3.3 In hosting the Web Site We agree to comply with the Seventh Data Protection Principle as set out in the Data Protection Act 1998 relating to data security.



- 3.4 We reserve the right to move or suspend the Web Site for short periods of time to allow Us to carry out maintenance or repair to Our servers or to implement improvements to the Web Site. We will notify You of planned maintenance by email. Please be aware that We occasionally perform emergency maintenance or repairs and on these occasions it will not be possible to notify You in advance.
- 3.5 Subject to the provisions of Clause 3.4 We shall use Our reasonable endeavours to make the Web Site available to You and Your clients between the hours of [8am] and [6pm], [365] days per year.
- 3.6 In the event that You become aware of a Problem You shall notify Us as soon as You become aware of such Problem and We shall use Our reasonable endeavours to respond to Your notification of Problems and to resolve them.

#### **4 Application Service Restrictions.**

- 4.1 You agree that:
- (a) You may use the Web Site and the CMS as hosted by Us and neither You nor any third party shall have any rights to download, copy or install the Web Site, the CMS or any part thereof onto any media or computer system belonging to You or to any third party;
  - (b) You will not reverse engineer, decompile, or disassemble the Web Site or the CMS, except to the extent that We cannot prohibit such acts by the applicable law;
  - (c) You will not sell, assign, license, lease, rent, loan, lend, transmit, network, or otherwise distribute, transfer or make available the CMS in any manner to third parties;
  - (d) You are expressly prohibited from adapting, modifying, merging, revising, improving, translating, upgrading, enhancing and creating derivative works of the Web Site or the CMS for any purpose including error correction or any other type of maintenance save that You may use the CMS to upload, download and edit Content on the Web Site;
  - (e) You will maintain and not remove any notices placed on the Web Site by Us or Our subcontractors;
  - (f) You will take security measures sufficient to reasonably safeguard the CMS from theft or from access by persons other than Our or Your authorised employees or agents; and
  - (g) You will keep the Web Site free and clear of all claims, liens and encumbrances.
- 4.2 The CMS element of the Web Site includes functionality permitting You to perform certain administration tasks including the uploading, downloading and editing the Content (the "Administrative Functions"). You undertake to keep all usernames, passwords and other access details relating to the Administrative Functions confidential and You agree to indemnify Us from any loss or damage arising from Your failure to do so.
- 4.3 You acknowledge that no additional fee shall be due to Us upon Your uploading, downloading or editing the Content but that the total data volume shall be limited to the physical space on the server that has been allocated for Your Web Site, as set out in the Specification.

#### **5 Your Co-operation.**

- 5.1 You shall provide co-operation and support to Us in Our efforts to develop the Web Site and to provide the Web Services. Such co-operation and support shall include, but not be limited to:
- (a) the timely provision of the Branding Materials and Your Content;
  - (b) a reasonable level of responsiveness to Our requirements and communications;
  - (c) the timely transmittal and release to Us of appropriate and accurate documentation



and information;

- (d) the prompt review and analysis of the work performed by Us;
- (e) the making available of facilities including but not limited to computer facilities, desk space, telephone access and parking when and to the extent as is reasonably requested by Us; and
- (f) the making available of competent personnel to assist Us when and to the extent as is reasonably requested by Us.

5.2 You agree that if You do not perform Your obligations under this Agreement and such non-performance affects Our ability to perform, We shall not be considered in default under this Agreement to the extent so affected, and You shall remain fully obligated to pay Us as provided in this Agreement regardless of any failure to perform any services so affected.

## **6 Acceptance**

- 6.1 When the Web Site has been completed We shall notify You of such in writing and the Acceptance Period shall commence from the date of such notification.
- 6.2 You shall examine and test the Web Site during the Acceptance Period and shall notify Us in writing of any Problems identified during this Period that will prevent Acceptance. If We do not receive any such notification during the Acceptance Period, the Web Site shall be deemed to be Accepted.
- 6.3 If We receive notification of Problems that prevent Acceptance during the Acceptance Period, then the Acceptance Period shall be extended by the period of time taken by Us to resolve such Problems and to notify You that Acceptance can be resumed.

## **7 Personnel.**

- 7.1 You shall advise Us of all rules, regulations and practices with which Our employees should comply while on Your premises. Our personnel shall use reasonable endeavours to comply with such rules and regulations whenever they are on Your premises. You shall take reasonable precautions to ensure the health and safety of Our staff, employees, agents and sub-contractors while they are on Your premises.
- 7.2 Without in any way restricting the right of an employee freely to accept employment and change employment if You induce an employee of Ours assigned to the development of the Web Site or to the Application Services to enter Your service at any time while such services are being provided under this Agreement or during a period of six months thereafter then You shall pay to Us an amount being equivalent to fifty percent (50%) of the employee's net annual salary such sum being a genuine pre-estimate of the cost of the disruption that such inducement would cause to the efficient conduct of Our business.
- 7.3 Unless expressly agreed in writing by the parties Our personnel shall not hold themselves out as Your agents and shall not have any authority to create any obligations on Your behalf.

## **8 Fees & Payment.**

- 8.1 We may invoice and You shall pay 50% of the Web Services Fee immediately upon execution of this Agreement.
- 8.2 We may invoice You the balance of the Web Services Fee (to include any amendments thereto made in accordance with clause 2.5 above) plus Our reasonable expenses (charged at cost) incurred in attending You for the development of the Web Site upon Acceptance and You shall pay each such invoice within thirty (30) days of the date thereon.
- 8.3 We shall invoice for the Web Services Fee in full upon each anniversary of the Effective Date and You shall pay such invoice within thirty (30) days of the date thereon.



- 8.4 You shall be liable for any other agreed upon fees, any value added tax or customs duties applicable. You shall pay an interest charge on any undisputed sum outstanding to Us at the rate of 7% above Barclays Bank Sterling base rate as at the date of invoice. You shall notify Us in writing within 10 days of receipt of an invoice that the invoice is in dispute.
- 8.5 We may increase the Web Services Fee not more than once in any twelve month period, and shall give You at least thirty (30) days written notice of any such increase. We may decrease the Web Services Fee at any time upon written notice to You.
- 8.6 If payment of the Fees or any part thereof is overdue then unless You have notified Us in writing that such payment is in dispute within 10 days of the receipt of the corresponding invoice We may at Our option:
- (a) suspend all work in progress in respect of development of the Web Site and/or provision of the Web Services until such payment is made in which case any expenses to Us occasioned by such suspension and subsequent resumption shall be added to the consideration and the project time-scales shall be delayed accordingly; or
  - (b) treat such as a material breach and terminate this Agreement in accordance with Clause 11.2 (a).

## **9 Warranties.**

- 9.1 Subject to the exceptions set out below and the limitations upon Our liability in Clause 10, We warrant that for a period of ninety days from Acceptance the Web Site will substantially comply with the Specification.
- 9.2 The warranty set out in Clause 9.1 does not apply to conditions resulting from improper use, external causes, including service or modifications not performed by Us, or operation outside the specified environmental parameters or from use other than as permitted under this Agreement. We do not warrant that the operation of the Web Site will be uninterrupted or error free.
- 9.3 Save as expressly provided in Clause 9.1 of this Agreement, We specifically exclude but without limitation all other conditions, warranties, representations or other terms relating to this Agreement hereto including any conditions, warranties, representations or other terms that might otherwise be implied or incorporated into this Agreement, such as those of satisfactory quality, fitness for a particular or any purpose, or ability to achieve any particular result.
- 9.4 You hereby agree that Your sole remedy in respect of any non-conformance with any warranty in this Agreement is that We will remedy such non-conformance (either by Ourselves or through a third party) and if in Our reasonable opinion, We are unable to remedy such non-conformance then We will refund the Web Services Fee, if paid, whereupon this Agreement shall immediately terminate.
- 9.5 You must promptly notify Us in writing of any breach of the above warranties in order to benefit from the remedy stated above in Clause 9.4. You shall provide all information as may be deemed necessary by Us to assist Us in resolving such breach.

## **10 Limitation of Liability.**

- 10.1 Nothing in this Agreement shall exclude or limit Our liability for (i) fraud or other criminal act, (ii) personal injury or death caused by the negligence of its employees in connection with the performance of their duties hereunder or by defects in any Application supplied pursuant to this Agreement, or (iii) any other liability that cannot be excluded by law.





- 10.2 Subject to Clause 10.1, in no event will We be liable under this Agreement for any damages resulting from: (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) lost profits, (iv) loss of anticipated savings, and/or (v) any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.
- 10.3 Except as provided in Clause 10.1 and in Clause 10.2 Our maximum aggregate liability to You for any cause whatsoever shall be for direct costs and damages only and will be limited to a sum equivalent to 125% of the aggregate of the Web Services Fee paid and payable by You in respect of the software or service that is the subject of Your claim.
- 10.4 We hereby exclude all liability that We have not expressly accepted in this Agreement. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause 10 "We" includes Our employees, sub-contractors, licensors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Clause in terms of the Contracts (Rights of Third Parties) Act 1999.
- 10.5 No action, regardless of form, arising out of transactions occurring under or contemplated under this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.
- 10.6 Save as provided in Clause 10.7 You shall have no remedy in respect of any representation (whether written or oral) made to you upon which You relied in entering into this Agreement ("Misrepresentation") and We shall have no liability to You other than pursuant to the express terms of this Agreement.
- 10.7 Nothing in this Agreement shall exclude or limit Our liability for any Misrepresentation made by Us fraudulently.

## 11 Duration & Termination.

- 11.1 This Agreement shall become effective on the Effective Date above first written and shall continue for the term set out in the Pitch (the "Initial Period") unless and until terminated in accordance with the provisions of Clause 9.4, Clause 11.2 and/or Clause 12.6(c). At the end of the Initial Period this Agreement shall be automatically renewed for a further term equal to the Initial Period unless either You or We give notice to terminate not less than six (6) months prior to the end of the current term, unless and until terminated in accordance with the provisions of Clause 11.2 and/or Clause 12.6(c).
- 11.2 Either party ("the Initiating Party") may forthwith terminate this Agreement at any time:
  - (a) on giving written notice to the other party if the other party commits any material breach of any term of this Agreement and in the case of a breach which is reasonably capable of remedy fails to remedy that breach to the reasonable satisfaction of the Initiating Party within thirty (30) days of a written request to remedy the same; or
  - (b) if the other party shall have a receiver or administrative receiver appointed over it or any of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity shall assume all of the liabilities of it) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on its business or if any substantially similar event shall take place under the laws of another jurisdiction; or
  - (c) on six (6) months written notice.



- 11.3 The expiry of this Agreement or the termination thereof for whatever reasons shall be without prejudice to any other rights or remedies a party may be entitled to under law and shall not affect the respective rights and liabilities of either of the parties accrued prior to such termination.

## 12 Intellectual Property.

- 12.1 Subject to the provisions of Clause 12.2 We are the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in the CMS and the Web Site. Title to the CMS and the Web Site shall remain vested in Us or Our licensors. For the avoidance of doubt title and all intellectual property rights to any design, new software, new protocol, new interface, enhancement, update, derivative works, revised screen text or any other items that We create for You shall remain vested in Us or Our licensors. Any rights not expressly granted herein are reserved to Us.
- 12.2 You are the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in Your Content and the Branding Materials. Title to Your Content and the Branding Materials shall remain vested in You or Your licensors. Upon payment of the first year's Web Services Fee in full, We shall assign copyright and all intellectual property rights in the New Content to You save where and to the extent that the New Content includes third party material in which case We shall assign to You the right to use the New Content as granted to Us by its owner or licensor.
- 12.3 You hereby agree to indemnify Us against any and all loss or damage arising from the breach of any third party intellectual property right or any applicable law resulting from the possession or use of Your Content and the Branded Materials, the incorporation of Your Content and the Branded Materials into the Web Site, or the use of Your Content and the Branded Materials in the hosting of the Web Site in accordance with the terms of this Agreement.
- 12.4 In the event that We become aware that the Web Site is being used for any unlawful purpose and/or that the Content is identified as containing material of an offensive or unlawful nature We reserve the right to remove access to the Web Site and to delete all such offending or unlawful material without prior notice or reference to You. This Agreement shall then immediately terminate in accordance with the provisions of Clause 11.2(a).
- 12.5 Subject to the provisions of this Clause 12, and in particular subject to Clause 12.3, We shall defend at Our own expense any claim brought against You alleging that the normal use of the New Content or the CMS infringes a patent, copyright, or mask work belonging to a third party in the United States of America or European Union ("Intellectual Property Claim") and We shall pay all damages awarded or agreed to be paid to any third party in settlement of an Intellectual Property Claim provided that You:
- (a) promptly furnish Us with written notice of the Intellectual Property Claim upon becoming aware of the same;
  - (b) make no admissions or settlements without Our prior written consent;
  - (c) act in accordance with Our reasonable instructions and provide Us with reasonable assistance in respect of the Intellectual Property Claim; and
  - (d) give to Us the sole authority to defend or settle the Intellectual Property Claim.
- 12.6 If in Our reasonable opinion the New Content or the CMS is or may become the subject of an Intellectual Property Claim then We shall either:
- (a) obtain for You the right to continue using the New Content or the CMS;
  - (b) replace or modify the New Content or the CMS so that it becomes non-infringing; or



(c) if such remedies in (a) and/or (b) above are not in Our opinion reasonably available, then You shall cease to use the New Content or the CMS and We shall refund to You the corresponding portion of the Web Services Fee, if paid, as normally depreciated and this Agreement shall then terminate.

- 12.7 We shall reimburse You Your reasonable costs incurred in complying with the provisions of Clause 12.5.
- 12.8 We shall have no liability for any Intellectual Property Claim resulting from the combination of the CMS or the New Content with other applications or material that were neither supplied nor combined with the CMS or the New Content by Us or if the same results from any breach of Your obligations under this Agreement.
- 12.9 This Clause 12 states Our entire obligation and liability and Your sole remedy in respect of any infringement or alleged infringement of any intellectual property rights arising from Your use of the CMS or the New Content. We hereby exclude all other obligations and liabilities in relation to infringement or alleged infringement of the intellectual property rights of any person.

### **13 Confidentiality.**

- 13.1 Confidential Information shall be defined as any information (whether disclosed in oral, written or electronic form) belonging or relating to Our or Your business affairs or activities, Clients and Client Accounts and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) may reasonably be supposed to be confidential in the circumstances.
- 13.2 Each party undertakes that for a period of five years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under this Agreement. Each party hereby agrees that it shall treat the other's Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature and in any event in accordance with best current commercial security practices, disclosing such Confidential Information only to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of this Agreement, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this clause.
- 13.3 The provisions of Clause 13.2 shall not apply to:
  - (a) any information in the public domain otherwise than by breach of this Agreement;
  - (b) information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party;
  - (c) information lawfully obtained without restriction from a third party; and
  - (d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavours to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.
- 13.4 We may publicise Our involvement with You with Your prior written consent such consent not to be unreasonably withheld or delayed.
- 13.5 If this Agreement is terminated, each party shall, at the other party's option, return or destroy all Confidential Information of the other party.

### **14 Assignment.**





You may not assign this Agreement or otherwise transfer any rights or obligations under this Agreement except with Our prior written consent.

**15 Escrow.**

If requested by You, We shall use reasonable efforts to establish an escrow arrangement with an independent third party escrow agent and You agree that the said arrangement shall be for Your sole benefit and that You shall therefore pay the appropriate fees to the said escrow agent.

**16 Force Majeure.**

Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under this Agreement shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

**17 Notices.**

All notices made pursuant to this Agreement must be made in writing. Any written notice to be given or made pursuant to the provisions of this Agreement shall be sent postage prepaid by registered or recorded mail or reputable courier service, addressed to the other party's address stated above and shall be marked for the attention of "The Company Secretary". Unless otherwise provided in this Agreement, all notices shall be deemed as given on the day of their receipt by the receiving party.

**18 Entire Agreement.**

This Agreement including its Annexes constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous representations, agreements and other communications between the parties, both oral and written. The Agreement shall prevail notwithstanding any variance with the terms and conditions of any order or purchase order submitted by You.

**19 Dispute Resolution, Law & Jurisdiction.**

- 19.1 In the event of any dispute arising under this Agreement the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be appointed by CEDR. No party may commence court proceedings in respect of any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 19.2 Subject to the provisions of Clause 19.1 each party hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes of whatever nature arising out of or relating to this Agreement.
- 19.3 Notwithstanding the provisions of Clause 19.1, nothing in this Agreement shall limit either party's right to seek injunctive relief.
- 19.4 This Agreement shall be governed by English law.

**20 Survival.**

The following clauses shall continue to be in effect after the termination or expiration of this Agreement: 1, 8, 10, 11.3, 12, 13, 16 - 20 inclusive.

**21 General.**

If any provision of this Agreement is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree that the remaining provisions of this Agreement shall not



be affected thereby, and that the remainder of this Agreement shall remain valid and enforceable. No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto. No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof or the exercise of any such power or right under this Agreement. This Agreement may not be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of Us and You. A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except as explicitly provided by Clause 10.4 herein but this does not affect any right or remedy of a third party that exists or is available apart from the Act.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement through their duly authorised representatives on the dates set forth below:

**Signed for and on behalf of Us  
You**

Signature

Name:

Title:

**Signed for and on behalf of**

Signature:

Name:

Title

DRAFT