

Last Updated **25 September 2020**

Terms and Conditions

These conditions are the only contractual terms upon which We Are TMG Limited (who trades as Kolodo) whose trading address is at Town House Business Park, Tarporley, Cheshire, CW6 OEG (registered with company number 10087681) is prepared to deal with its customers and will govern all contracts for the supply of services formed by our acceptance of a customer Client Services Agreement or a customer's acceptance of our proposal or quotation to the exclusion of any other contractual terms including any which a customer attempts to introduce.

We may change these terms from time to time. If you have any questions regarding these terms and conditions, please call us on 0333 050 3882 or email us hello@kolodoagency.com.

Contents

Clause	Page
1. General	4
2. Prices / Fees	4
3. Terms of Payment.....	4
4. Website/Application Design & Development	5
5. Responsibility for Approving Website.....	6
6. Search engine optimisation (SEO)	6
7. Web Hosting and WebCare.....	6
8. Pay-Per-Click (PPC).....	7
9. Other Services	8
10. eCommerce Payment Gateway	8
11. Delivery and Completion Dates	8
12. Warranties.....	9
13. Intellectual Property and Licence.....	9
14. Term & Termination.....	9
15. Indemnity and Limitation of Liability.....	11
16. Confidentiality	11
17. Solicitation of Employees.....	12
18. Assignment and Subcontracting.....	12
19. Notices.....	12
20. Severance	12
21. Third-Party Rights.....	12
22. Entire Agreement	12
23. Law and Jurisdiction	12

Definitions

In these conditions, unless the context requires otherwise:

“Charges” means the charges as set out in a quotation and/or an Client Services Agreement and/or Kolodo’s proposal

“Confidential Information” means all information designated as such by either party in writing together with all such other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel and customers of either party or information which may reasonably be regarded the confidential information of the disclosing party.

“CPI” means Consumer Price Index.

“Kolodo” means We Are TMG Limited (company number 10087681) whose registered office is at Town House Business Park, Tarpoley, Cheshire, CW6 0EG.

“Kolodo’s Website” means the websites at www.kolodoagency.com

“Customer” means the person, company, firm, or body purchasing the Services from Kolodo.

“Customer Content/Data” means text, graphics, photographs, sounds, information, data, music, video, film or any other copyright work publicly available on the Website/Application or provided for publication on the Website/Application either by the Customer or any other third party (excluding Kolodo) commissioned by the Customer, together with all User Generated Content and information regarding Users (such as, for example, the number of page impressions, users email addresses or other information posted by Users or depicted by the Website/Application about Users).

“Due Date” means the fourteenth day after the date on which Kolodo issues an invoice to a Customer.

“Domain Name” means the name registered with an Internet Registration Authority used as part of the Customer’s URL.

“Hosting Service” means the installation of the Website/Application onto the Server, such that the Website/Application can be accessed by members of the public via the internet.

“Information” means information in any form (including visual and textual) published or otherwise made available (directly or indirectly) on the Internet via the Website/Application.

“Intellectual Property Rights” means patents, trademarks, service marks, database rights, design rights (whether registered or otherwise), applications for any of the foregoing, copyright, know-how, trade or business names, domain names and other similar rights or obligations whether registerable or not and in any territory or jurisdiction (including but not limited to the United Kingdom).

“Nominated Search Engines” means the search engines known as “Google” and/or “Bing”

“Ongoing Services” means hosting, search engine optimisation (SEO), pay per click (PPC) advertising management, conversion rate optimisation (CRO) or any other services of an ongoing nature offered by Kolodo which impose a recurring charge to the Customer.

“Order” means a request in respect of any Services made by the Customer to Kolodo, either by completing a Client Services Agreement, acceptance of a proposal, quotation or estimate.

“**Client Services Agreement**” means the signed ‘Client Services Agreement’, which, subject to these conditions, relate to the provision of the Services between Kolodo and the Customer, in the form of a binding Contract.

“**Contract**” means the signed ‘Client Services Agreement’, together with this document, which are in consideration of the services provided.

“**Initial Term**” means the term of any ongoing services contained within the Client Services Agreement or proposal, or where not specified, twelve months on a rolling contract basis from the date of the Client Services Agreement acceptance.

“**PPC**” means Pay Per Click.

“**SEO**” means Search Engine Optimisation services being the means or process of affecting the visibility of a website or a web page in a search engine’s search results.

“**CRO**” means Conversion Rate Optimisation.

“**Server**” means Kolodo’s Internet server(s) or the server(s) belonging to Kolodo’s nominated sub-contractors.

“**Services**” means the services which are the subject matter of the Client Services Agreement, being the work and/or services or any of them to be performed by Kolodo for the Customer pursuant to the Client Services Agreement.

“**Specification**” means the specification for the Website/Application agreed between Kolodo and the Customer and set out, or referred to in the Client Services Agreement, or otherwise stated/varied and agreed in writing by Kolodo.

“**User**” means any person, company, firm or body accessing the Website/Application via the Internet or by any other means.

“**User Generated Content**” means all such material posted by Users on the Website/Application.

“**URL**” means a uniform resource locator.

“**Website/Application**” means the website or application developed and/or optimised by Kolodo for the Customer as described in the Specification.

“**Website/Application Design Services**” means all work in connection with the planning, design, development and maintenance of a website or application, to include but not limited to, initial prototype/wireframe layouts, creative design, HTML & CSS mark-up, JavaScript authoring, PHP & MySQL programming and adherence to our internal quality, usability and search engine guidelines.

“**Hosting**” means any hosting solution provided by Kolodo, including website/application and email hosting, and website back-up services.

Agreed Terms

1. General

- 1.1. Proposals or Quotations submitted by Kolodo shall remain open for acceptance by the Customer for a period of 14 days from the date of the quotation, unless the quotation specifies some other period, or the quotation is withdrawn by Kolodo.
- 1.2. A Contract will only become binding upon acceptance by Kolodo of the Client Services Agreement by signing or counter signing and dating of the Client Services Agreement and returning it to the Customer, or the issue by Kolodo of an order acknowledgement.
- 1.3. This Contract is subject to these conditions. Kolodo reserves the right to vary the terms of the Contract from time to time. Notice of such variation and a current version of Kolodo's standard terms and conditions may be found on Kolodo's Website.
- 1.4. These conditions shall, to the extent applicable, apply to goods and products in the same way as they apply to the Services.
- 1.5. If the Customer is a limited company, the Services are provided upon the condition that the officers of the limited company are personally liable for, and hereby guarantee all sums payable by the Customer to Kolodo. If the Customer does not make payment of any sums due to Kolodo within 7 days of receipt of a written demand from Kolodo (such demand not to be made sooner than the Due Date), then the officers of the limited company will make payment on behalf of the Customer.

2. Prices / Fees

- 2.1. The price for the Services shall, subject to Clause 1.1 above, be that stated in any relevant quotation, estimate and/or confirmed in a Client Services Agreement.
- 2.2. Kolodo shall (if applicable) add to the price of the Services, and the Customer shall pay, an amount equal to any VAT and any other tax or duty applicable from time to time to the sale or supply of such Services.
- 2.3. In relation to any Ongoing or Retainer Services: -
 - 2.3.1. Kolodo shall be entitled to increase its prices at least once in any rolling 12-month period; and in any event, the price of the Ongoing Services shall increase automatically on the anniversary of this Contract by the CPI. Kolodo may impose any such increased charges at any time after the anniversary date of the Contract.
 - 2.3.2. Kolodo shall notify the Customer of any price increases made pursuant to Clause 2.3.1 in writing at least 7 days before any such price increase takes effect. For the avoidance of doubt, the issue of an invoice setting out the increased charges may constitute notice pursuant to this Clause.
 - 2.3.3. The Customer will be charged on a pro rata basis for the number of days the Customer receives the benefit of any Ongoing Services where such services are provided for less than a calendar month.

3. Terms of Payment

- 3.1. Prices quoted are net and in Pounds Sterling.
- 3.2. In relation to any Order for Website/Application Design Services, the Customer shall pay to Kolodo the full value of the Order as per the Payments Due schedule in the Client Services Agreement.
- 3.3. In respect of Ongoing Services, the Customer shall, at the time of submission of an Order to Kolodo, pay to Kolodo a non-refundable sum equivalent to 100% of the amount to be paid on a recurring basis attributable to each of the Ongoing Services. For the avoidance of doubt, such charges may be levied on a monthly, quarterly or annual basis. Thereafter, charges for Ongoing Services will be invoiced to the Customer on a regular recurring basis in advance, in accordance with the Order.
- 3.4. In respect of SEO Services, PPC Services and CRO Services the Customer may be required to pay a non-refundable set up fee at the time of submission of an Order, which will be detailed on the order accordingly.
- 3.5. In the event that the Customer's acts or omissions prevent the Website/Application from being set live, in circumstances where Kolodo has undertaken all of the work that it is reasonably required to undertake pursuant to this Contract and/or in

any event, where the Customer fails to provide instructions or permit the progress of the Website/Application for more than 6 months the Customer shall be liable for the full amount of the Order, whether or not the Website/Application is completed and/or set live; and Kolodo shall not be obliged to undertake any further work pursuant to the Contract.

- 3.6. Unless otherwise specified by Kolodo and without prejudice to the remainder of this Clause 3, the Customer must pay any invoice issued to it by Kolodo by the Due Date in accordance with Clause 3.10 below.
- 3.7. Failure to make payment by the Due Date, or otherwise in accordance with this Clause 3 may result in the suspension and/or disconnection of any of the Services (at Kolodo's discretion) without any liability to Kolodo.
- 3.8. The Customer will make payments due to Kolodo by any one or more of the following means:
 - 3.8.1. Direct Debit mandate with Kolodo
 - 3.8.2. or electronic transfer direct to Kolodo's nominated bank account (shown on the invoice)
 - 3.8.3. or Credit/Debit card; and in each case payment shall be in pounds' sterling without setoff or deduction.
- 3.9. In the event that the Customer pays by any method other than Direct Debit, Kolodo reserves the right to charge an administration fee of £15 per month.
- 3.10. In the event of payment by Credit/Debit card, the Customer consents to Kolodo charging any Credit/Debit card previously supplied to it by the Customer for the balance of any invoice remaining due after the Due Date without recourse to the Customer, unless the Customer has informed Kolodo in writing that it disputes the invoice, and has identified the reasons for such dispute; and provided that such dispute is legitimate and made in good faith. The Customer consents to Kolodo retaining its Credit/Debit card details for the purpose of this Clause 3.11.
- 3.11. If the Customer fails to pay an invoice by the Due Date, default interest at the rate specified by the Late Payment of Commercial Debts (Interest) Act 1998 shall be added to such amount for the period from the day after the due date until the date of receipt (whether before or after judgment) together with any reasonable and proper amounts incurred by Kolodo in seeking to recover such late payment from the Customer (including, without limitation, legal fees).

4. Website/Application Design & Development

- 4.1. Where specified in the Client Services Agreement, Kolodo shall provide Website/Application Design Services. Kolodo agrees to build and/or develop the relevant Website/Application in accordance with the Specification. In the event of a dispute arising as to whether the Website/Application satisfies the Specification, Kolodo's decision shall be final and binding.
- 4.2. The Customer shall provide to Kolodo in a timely and suitable manner and in a format required by Kolodo, such information as may be reasonably necessary to enable Kolodo to complete the Website/Application in accordance with the Specification, provided that the Customer shall not supply any Information which infringes the Intellectual Property Rights of a third party or is fraudulent, offensive, abusive, defamatory, obscene or menacing or causes annoyance, inconvenience or needless anxiety or constitutes unsolicited advertising or promotional material.
- 4.3. The Customer unconditionally guarantees that any element of text, graphics, music and/or the Customer Content/Data other artwork furnished to Kolodo for inclusion in the Website/Application is owned by the Customer, or that the Customer has permission from the rightful owner to use each of these elements, and will hold harmless, protect and defend Kolodo and its subcontractors from any claim or suit arising from the use of such elements furnished by the Customer.
- 4.4. Kolodo shall convert the Information and/or Customer Content/Data into a display-ready format for the Website/Application, to meet the Specification.
- 4.5. If the Information and/or Customer Content/Data is not in a suitable digital format, as agreed between Kolodo and the Customer, an additional charge will be made for its conversion by Kolodo.
- 4.6. Kolodo may agree to carry out such changes to the Website/Application as the Customer reasonably requires, provided that the cost of such changes shall be in addition to the Charges and shall be paid by the Customer where the changes are required as a result of the Customer's desire to depart from the Specification.

- 4.7. The Customer will be given two chances to state amendments to design work before development work is completed. Further sets of amendments will be provided however the cost of such changes shall be in addition to the Charges and shall be paid by the Customer.
- 4.8. The Customer will be given two chances to state amendments to development work before the Website/Application is completed. Further sets of amendments will be provided however the cost of such changes shall be in addition to the Charges and shall be paid by the Customer.
- 4.9. The Supplier shall nominate a Project Manager who shall be available to respond to the Customer's enquiries and who shall manage the Project upon the terms of this clause. The Project Manager shall act promptly and fairly at all times during the term of this Agreement and in particular shall:
 - 4.9.1. contribute as many hours or days of work as are required from time to time for the needs of the Project in accordance with the Timetable; and
 - 4.9.2. keep detailed records of all work carried out in relation to the Project by him or any other employee or agent of the Supplier, such records or copies thereof to be made available to the Customer on request and to remain confidential to the Supplier and the Customer.

5. Responsibility for Approving Website

- 5.1. The Customer acknowledges and agrees that Kolodo shall produce the Website/Application based on the Specification as provided by the Customer.
- 5.2. On completion of the Website/Application the Supplier shall provide the Customer with a temporary/staging URL where the Website/Application can be viewed and tested. If the Project Co-ordinator in his sole discretion considers that the Website/Application has failed in any way to perform in accordance with the Specification and/or that amendments or modifications or corrective or remedial work are required, he shall promptly advise the Supplier in writing outlining the areas which require to be modified.
- 5.3. It shall be the responsibility of the Customer (and not Kolodo) to review and approve the contents of the Website/Application (including, without limitation, the spelling of names and addresses and the accuracy of telephone numbers) as soon as is reasonably possible.
- 5.4. The customer should provide notice in writing of any errors or omissions which they wish to be amended, along with the exact replacement text.
- 5.5. Kolodo shall have no liability to the Customer for any inaccuracies in the Website/Application.

6. Search engine optimisation (SEO)

- 6.1. Where specified in the Client Services Agreement, Kolodo shall provide SEO Services. Kolodo shall use its reasonable endeavours to improve the ranking of the Website in the Nominated Search Engines, however, Kolodo does not in any way guarantee the results of such endeavours. For the avoidance of doubt, the Customer accepts that Kolodo cannot guarantee any particular or specific position or ranking on any search engine, or the increase of any business to the Customer in respect of any of the Services provided.
- 6.2. Kolodo shall have no liability to the Customer for any changes to the position of the Website/Application in the Nominated Search Engine results in response to a search.
- 6.3. SEO Services may not be suspended during the Contract term.
- 6.4. SEO reports are generated 'live' and therefore the data is guaranteed to be accurate at the time of production.

7. Web Hosting and WebCare

- 7.1. Where specified in the Client Services Agreement, Kolodo shall provide Hosting Services, or a WebCare package, to the level specified.

- 7.2. The Customer shall be solely responsible for the accuracy, legality, currency and compliance of the Website/Application Information and User Generated Content and will be solely liable for false, misleading, inaccurate, or infringing information contained or referred to therein.
- 7.3. The Customer acknowledges and accepts that Kolodo may be required by law to monitor the Website Content and traffic, and if necessary give evidence of the same together with use of the logon ID to support or defend any dispute or actionable cause or matter which arises in relation to the same.
- 7.4. Kolodo does not warrant that the Hosting Service or Server will be continuously available at all possible times (24 x 7 x 365 days), but will use its reasonable endeavours to keep downtime to a minimum; and the Customer agrees that Kolodo shall have no liability to the Customer for the consequences in the event of any such downtime.
- 7.5. Kolodo may need to at times, temporarily suspend the Hosting Service for repair, maintenance or improvement and will give the Customer as much notice as is reasonably practicable in the circumstances before doing so. Kolodo will also restore the Hosting Service as soon as reasonably possible.
- 7.6. The Customer accepts the Hosting Service and Server "as is" with any faults or failings and without any representation, warranty or guarantee whatsoever, express or implied, including without limitation any implied warranty of accuracy, completeness, quality, continuity of service, connectivity and fitness for a particular purpose.
- 7.7. Charges in relation to the Hosting Services may vary in accordance with the requirements of the Customer. The Customer accepts and agrees that if its usage rises to an additional specification, the Customer shall pay the relevant charges, for the month in which the usage rises.
- 7.8. Kolodo may require the Customer to purchase a bespoke hosting package within 3 months if usage rises beyond a reasonable specification, and the Customer agrees to be responsible for the associated costs of such bespoke package.
- 7.9. Where either party gives notice to transfer the Hosting Service from Kolodo to a third party Kolodo shall charge a transfer fee, and will not affect such transfer unless or until such fee and any/all sums owing to Kolodo are paid in full.
- 7.10. Kolodo guarantees that the customer's website which is hosted on the WebCare network and Servers, will be available 99.99% of the time, excluding Maintenance, as defined below. The customer is eligible for a service credit for any Downtime which breaches this guarantee, which can be verified by the Kolodo technical support team. Network Downtime is defined as the customer's hosted website or service being unable to be viewed or accessed through the Internet, caused by failure of network equipment managed and owned by Kolodo, excluding Scheduled or Emergency Maintenance.
- 7.11. Maintenance means Scheduled Maintenance or Emergency Maintenance. Scheduled Maintenance means any maintenance in the Kolodo datacentre of which the Customer is notified at least 5 days in advance. Emergency Maintenance means any maintenance in the Kolodo datacentre that: (a) in Kolodo's sole discretion, is necessary to avoid an immediate threat to the Kolodo datacentre or Customer's server; and (b) of which Customer is notified.
- 7.12. WebCare SLA: At Kolodo we aim to deliver the highest possible levels of up-time, and agree that the Hardware on which your 'WebCare Hosting' is based, and service critical infrastructure, including Power and Network Connectivity will be available for 99.99% of the time (excluding scheduled maintenance, advance notice of which will be given wherever possible). In the event of an outage to one of these service components which results in server downtime customers may be entitled to claim a service credit of one day's service fee for every hour that the server is unavailable, depending upon the outage circumstances. The period of the outage will be measured from the time you report the problem to our confirmation of restoration of service. SLA claims may be made up to a maximum of one month's service fee in any calendar month. Outages caused by third party software installations or other modifications to the default server operating system as deployed do not fall within the terms of this Service Level Agreement.
- 7.13. All WebCare hosting solutions are subject to a rolling 6-month contract term, with 6 months notice at any point, unless terminated in accordance with this agreement.

8. Pay-Per-Click (PPC)

- 8.1. Where specified in the Client Services Agreement eJIGSAW shall provide a PPC service on the search engine known as "Google", or "Bing" as specified.

- 8.2. The Customer acknowledges and accepts its responsibility to ensure that all monies due and owing to Google and Microsoft are paid directly to it, unless otherwise agreed in writing with Kolodo.
- 8.3. Kolodo shall take reasonable steps to ensure that it does not substantially exceed any budget set by the Customer. However, Kolodo does not accept any liability for any charges made by Google in excess of any such monthly budget, save where such sum is exceeded by more than 100% of the Customer's budget in the immediately preceding month. In this event, any potential liability to Kolodo shall be limited to a sum equivalent to the Customer's monthly budget for PPC services.
- 8.4. Charges in relation to PPC shall vary in accordance with the Customers' requirements, but would be laid out within the Client Services Agreement.
- 8.5. Where Kolodo has set up a PPC account with Google or Bing, Kolodo shall retain ownership and/or control of such account unless or until the Customer has paid its monthly Charges for a minimum of 4 consecutive months. The Customer may elect to suspend its PPC service at any time, but shall in any event remain liable for the management fee paid or payable to Kolodo in the preceding 4 months or less (whichever is the greater).
- 8.6. Kolodo does not in any way guarantee the results or effects of the PPC service. For the avoidance of doubt, the Customer accepts that Kolodo cannot guarantee any particular or specific position or ranking on any search engine, or the increase of any business to the Customer in respect of any of the Services provided.

9. Other Services

- 9.1. Kolodo is a reseller partner for Domain Name registration, mailboxes and print services. Kolodo provides such services subject to the terms and conditions of the relevant third party service providers; and the Customer agrees hereby to be bound by and comply with such terms and conditions.
- 9.2. Kolodo does not accept any liability to the Customer for any financial loss resulting or arising from:
 - 9.2.1. a Domain Name not being renewed; and/or
 - 9.2.2. any registered mailbox or other such services not being available, which is provided by a third party (such as Gmail).
- 9.3. Where the Customer obtains Public Relations or Crisis Management advice or representation, the Customer agrees to provide Kolodo with all necessary information in order to carry out its duty and the campaigns specified within the Client Services Agreement.

10. eCommerce Payment Gateway

- 10.1. Where specified in the Client Services Agreement Kolodo shall provide eCommerce related services, and in such circumstances, may use a third-party payment gateway provider (for example 'Stripe', 'WorldPay', 'SagePay' and/or 'PayPal'), the Customer hereby agrees to be bound by and comply with the terms and conditions of such third-party payment gateway providers.
- 10.2. Kolodo does not accept any liability for any financial loss resulting from the Customer's use of service or functionality supplied via a third-party supplier.

11. Delivery and Completion Dates

- 11.1. Kolodo undertakes to use its reasonable endeavours to provide completed Website/Application Design Services to the Customer within the time frame stipulated in the Client Services Agreement, or if no time frame is specified, within a reasonable period from the date on which Kolodo receives a signed Client Services Agreement from the Customer.
- 11.2. The dates and timeframes for carrying out the Services and delivery of any resultant Website/Application are approximate only. The Customer hereby acknowledges and agrees that time is not of the essence for delivery or performance.
- 11.3. Without prejudice to Clause 15, Kolodo will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform save where the same is a result of the gross negligence of Kolodo.
- 11.4. No delay shall entitle the Customer to reject any delivery or performance or any other Client Services Agreement from the Customer, or to repudiate the Contract or the Client Services Agreement.

12. Warranties

12.1. The Customer warrants that:

- 12.1.1. it has the right to include, and permit Kolodo to include, the Information and the Customer Content/Data on the Website/Application, or has obtained the rights from third parties to do so;
- 12.1.2. it will not supply Kolodo with, or upload to the Website/Application, post, email, or otherwise transmit (or allow to be transmitted) by the Website/Application (or request that Kolodo carries out any such upload, posting, email or transmission on the Customer's behalf), of any Customer Content/Data, Information or User Generated Content that is:
 - 12.1.2.1. unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful or racially, ethnically or otherwise objectionable;
 - 12.1.2.2. harmful to minors in any way;
 - 12.1.2.3. in breach of any third party right under any law or under a contractual or fiduciary relationship;
 - 12.1.2.4. an infringement of any Intellectual Property Rights;
 - 12.1.2.5. unsolicited or unauthorised advertising, promotional material, "junk mail", "spam", "chain letters", "pyramid schemes", or any other form of solicitation;
 - 12.1.2.6. containing software viruses or any other computer code, files or programmes designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
 - 12.1.2.7. intentionally or unintentionally a violation of any applicable law and/or regulation having the force of law;
 - 12.1.2.8. data which contravenes the United Kingdom Data Protection Legislation in any way;
- 12.1.3. it will comply with the Data Protection Act 1998.

12.2. The Customer accepts that Kolodo is under no obligation to monitor or approve the Information, Customer Content/Data or User Generated Content and accepts that Kolodo excludes all liability of any kind for all material comprising the same.

12.3. Kolodo warrants that:

- 12.3.1. it shall perform the Services with reasonable skill and care in accordance with the standards generally observed in the industry for similar services; and
- 12.3.2. it will comply with the Data Protection Act 1998 and where it is 'Data Processor' in respect of the General Data Protection Regulations (GDPR), it will comply with its provisions.

13. Intellectual Property and Licence

- 13.1. The Customer acknowledges that any Intellectual Property Rights created, developed, subsisting or used by Kolodo in or in connection with the provision of the Services shall be the sole property of Kolodo.
- 13.2. Subject to the provisions of Clause 13.3 below, the Intellectual Property Rights, together with all rights, title and interest in the same in relation to the Website/Application and the Domain Name registration shall vest exclusively in Kolodo. As such, Kolodo shall be free to reproduce, use, disclose, display, exhibit, transmit, perform, create derivatives works, and distribute such material unless specifically agreed otherwise. Further, Kolodo shall be free to use any ideas, concepts, know-how or techniques acquired in the construction of the Website/Application for any purpose whatsoever included but not limited to developing, manufacturing and marketing products and any other items incorporating such information unless specifically agreed otherwise.
- 13.3. All rights, title and interest in and to the Intellectual Property Rights in the Customer Content/Data belonging to the Customer shall vest exclusively in the Customer.

14. Term & Termination

- 14.1. Unless otherwise agreed in writing with Kolodo, the Customer acknowledges and agrees that the duration of the Initial Term for all Ongoing Services will be for the Initial Term specified within the Client Services Agreement, or if not specified, twelve months.

- 14.2. On expiry of the Initial Term, the contract will be subject thereafter to twelve monthly rolling contract periods, subject to the notice provisions in this Clause.
- 14.3. Following expiry of the Initial Term either party may terminate the Contract:
- 14.3.1. in relation to all Ongoing Services except PPC by giving 3 months' written notice; and
 - 14.3.2. in relation to PPC services, by giving 1 months' written notice; and
 - 14.3.3. in relation to WebCare or Hosting services, by giving 6 months written notice prior to the expiration of the current 6-month rolling contract term.
- 14.4. In respect of Website/Application Design Services, where the Contract is terminated before Website/Application is set live Kolodo shall be entitled to be paid the full amount of the Order.
- 14.5. Either party may terminate the Contract immediately and without notice if:
- 14.5.1. the other enters into a composition with its creditors;
 - 14.5.2. an order is made for the winding up of the other;
 - 14.5.3. an effective resolution is passed for the winding up of the other (other than for the purpose of amalgamation or reconstruction on terms approved by the first party (such approval not to be unreasonably withheld)); or
 - 14.5.4. the other has a receiver, manager, administrative receiver or administrator appointed in respect of it.
- 14.6. Kolodo shall be entitled to terminate the Contract immediately upon service of written notice to the Customer if:
- 14.6.1. any invoice remains outstanding for more than 30 days; or
 - 14.6.2. the Customer fails to co-operate with and/or provide Kolodo with clear instructions, or information requested by Kolodo for more than 14 days; or
 - 14.6.3. Kolodo considers (at its sole discretion) reasonable to do so.
- 14.7. Termination of the Contract shall be without prejudice to any other rights or remedies of either party.
- 14.8. Upon termination of this Contract for any reason, the Customer:
- 14.8.1. shall cease immediately to be entitled to use the Website/Application unless or until the Customer has paid all outstanding Charges up to the date of termination together with any sums due in respect of the Ongoing Services (whether already provided or contracted to be provided during the Initial Term and/or any relevant notice period); and in any event
 - 14.8.2. shall grant Kolodo immediate access to the Website/Application (whether hosted by Kolodo or otherwise), and/or provide any/all such information necessary to facilitate such access for the purpose of disabling any links and/or removing any other SEO techniques and/or coding created by Kolodo which form part of the SEO Services provided by Kolodo, and for removing from the Website/Application any other Intellectual Property Rights belonging to Kolodo. For the avoidance of doubt, this may affect the appearance of the Website/Application and the search engine ranking positions of the Website/Application. Kolodo shall not be liable for any such changes.
- 14.9. If the Customer fails to provide immediate access to the Website/Application pursuant to Clause 15.7.2 above, the Customer shall remain liable for the relevant Charges for the Ongoing Services on a recurring basis in accordance with the Contract until such time as the Customer complies with Clause 15.7.2 above.
- 14.10. The terms of Clauses 13 (Intellectual Property), Clause 15 (Indemnity and Limitation of Liability) and Clause 16 (Confidentiality) shall survive the termination (howsoever arising) of this Contract.
- 14.11. Force Majeure: Kolodo shall not be liable for failure to perform the Services if such failure is as a result any act beyond its reasonable control (including, without limitation, fire, flood, earthquake, storm, hurricane or other natural disaster), war, civil unrest, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, epidemic or pandemic, lockout or interruption or failure of electricity or telephone service and/or any failure attributable to Kolodo's sub-contractors and/or service providers (in Kolodo's discretion)
- 14.12. All terminations should be received in writing.
- 14.13. Terminations will result in the termination of their respective services, Kolodo accepts no liability for the loss of service following a termination by the customer or their representatives, as in Clause 16.

15. Indemnity and Limitation of Liability

- 15.1. The Customer shall indemnify Kolodo against any loss, damage, cost or expense (including reasonable legal fees and expenses) Kolodo may suffer or incur as a result of:
- 15.1.1. any act, omission, neglect or default of the Customer, its agents, or employees.
 - 15.1.2. any claim by any third party that the Customer's Information and/or Customer Content/Data infringes the Intellectual Property Rights of a third party or is fraudulent, offensive, abusive, defamatory, obscene or menacing or causes annoyance, inconvenience or needless anxiety or constitutes unsolicited advertising or promotional material;
 - 15.1.3. work done in accordance with the Customer's instructions in hosting of the Website on the Server involving the infringement of any Intellectual Property Rights (including but not limited to framing or linking to third parties' websites):
 - 15.1.4. any claim by a third party arising from the Customer's breach of the warranties under Clause 13 above.
- 15.2. Kolodo shall not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Contract, the Server, the connectivity to the Internet, the hosting, the Website/ Application, its use (including but in no way limited to any unlawful or unauthorised access or use by any third party), application, support or otherwise, except to the extent which it is unlawful to exclude such liability.
- 15.3. Nothing in this Contract shall exclude or limit the liability of Kolodo for fraudulent misrepresentation or for any death or personal injury caused by Kolodo's negligence.
- 15.4. Kolodo will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any economic loss of any kind (including but not limited to loss of profit, business, contracts, revenue or anticipated savings), any damage to the Customer's reputation or goodwill or any other special, indirect or consequential loss (whatsoever and howsoever caused) which arise out of or in connection with the Contract.
- 15.5. The Customer acknowledges and agrees that Kolodo's total liability in respect of the warranty provided under Clause 12.3 shall be limited to re-performance of the Services or a refund of the relevant purchase price.
- 15.6. Notwithstanding Clause 15.4 above, the Customer acknowledges and agrees that Kolodo's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the amount paid by the Customer pursuant to the relevant Contract.
- 15.7. Neither party shall be liable for any failure in the performance of any of its obligations under the agreement caused by factors beyond its reasonable control.

16. Confidentiality

- 16.1. Each party agrees and undertakes that it will hold in complete confidence any Confidential Information disclosed to it, and will not disclose it in whole or in part at any time to any third party, nor use any Confidential Information for any purpose other than the performance of its obligations under the Contract. This provision shall survive the termination of the Contract for any reason for a period of 2 years commencing immediately on the date of such termination.
- 16.2. The obligations set out in this Clause 16 shall not apply to any Confidential Information which:
- 16.2.1. at or prior to the time of disclosure was known to the receiving party as evidenced in writing, except to the extent that such information was unlawfully appropriated;
 - 16.2.2. at or after the time of disclosure becomes generally available to the public other than through any act or omission on the part of the receiving party;
 - 16.2.3. is received from a third party who was free to make such disclosure without breaching any legal obligation;
 - 16.2.4. is independently developed by the receiving party; or
 - 16.2.5. is required to be disclosed by law, court order or request by any government or regulatory authority.

17. Solicitation of Employees

- 17.1. at any time during the period from the Date of this Agreement to the expiry of twelve months after the date of termination of this Agreement solicit or endeavour to entice away from or discourage from being employed by the Supplier any person who is, or shall have been during the time period between the Commencement Date and the date of termination of this Agreement any of the Supplier's employees; or
- 17.2. at any time during the period from the Date of this Agreement to the expiry of twelve months after the date of termination of this Agreement

18. Assignment and Subcontracting

- 18.1. None of the rights or obligations of the Customer under the Contract may be assigned or transferred in whole or in part without the prior written consent of Kolodo.
- 18.2. The Website/Application shall be for the sole use of the Customer and shall not be capable of assignment to a third party by the Customer without the prior written consent of Kolodo.
- 18.3. Kolodo shall be entitled to sub-contract any work relating to the Contract without obtaining the consent of, or giving notice to the Customer.
- 18.4. Kolodo shall be free to assign its rights in the Contract to any third party without giving prior notice to the Customer.

19. Notices

- 19.1. Any and all termination notices should be sent to josh.diamond@kolodoagency.com.
- 19.2. Any other notices must be sent in writing via post to Kolodo, Town House Farm, Tarpoley, Cheshire, CW6 OEG.
- 19.3. Any notice or document shall be deemed served: if delivered, at the time of delivery; if posted, 48 hours after posting, and if sent by electronic mail, at the time of sending.

20. Severance

- 20.1. If any provision (or part of a provision) of this Contract is found by any court or administrative body of a competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 20.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

21. Third-Party Rights

- 21.1. A person who is not party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

22. Entire Agreement

- 22.1. This document, together with the Client Services Agreement or proposal represents the entire agreement between both parties, unless superseded by a specific, bespoke Customer Contract.

23. Law and Jurisdiction

- 23.1. The Contract shall be governed by and construed in all respects in accordance with English law and parties hereby submit to the exclusive jurisdiction of the English courts.