

BITE DIGITAL LIMITED

-and-

ClientName

MASTER SERVICES AGREEMENT

Number 1.0

Perkins Solicitors
1 King Street
Manchester
M2 6AW

DATE 01/06/07

PARTIES

1. **BITE DIGITAL LIMITED** a company incorporated in England and Wales under number **05971020** whose registered office is at Bushbury House, 435 Wilmslow Road, Withington, Manchester, M20 4AF (“Bite Digital ”)
2. [] a company incorporated in England and Wales under number [] whose registered office is at [] (the “Client”)

BACKGROUND

This Agreement establishes the basis for a procurement relationship under which Bite Digital will provide Client with internet marketing, interactive multimedia, web development and hosting services pursuant to Work Authorisations (defined below) issued under this Agreement.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

- 1.1. In this Agreement unless the context otherwise requires, the follow words and expressions shall have the following meanings:

“Additional Charges”	charges calculated by Bite Digital on a time and materials basis at its then prevailing rate;
“Agreement”	the provisions below and in any Schedule and in any Work Authorisation;
“Bite Digital Materials”	all materials created, developed or provided by Bite Digital or its supplies and used in the provisions of the Services and/or Deliverables;
“Bite Digital Server”	a dedicated service on which the Hosted Software is located;
“Business Day”	between the hours of 0900 and 1700 Monday to Friday (inclusive) other than English Bank holidays;
“Charges”	the charges for the Services as set out in the relevant Work Authorisation, Additional Charges and disbursements, fees and payments incurred by Bite Digital on Client’s behalf;
“Client Equipment”	the computer equipment identified in the Work Authorisation or the replacement equipment referred to in clause 6.7;

“Deliverables”	any item or items to be delivered to Client by Bite Digital and identified in the Work Authorisation;
“Dependencies”	steps to be taken by Client and identified in the statement of work in the Work Authorisation;
“Hosted Software”	any Software hosted by Bite Digital for or on behalf of Client under this Agreement;
“Intellectual Property Rights”	any and all copyright and rights in the nature of copyright, database right and all related neighbouring rights, moral rights, design rights (whether or not registered or capable of registration), domain name rights, patents, patent applications, trade or service marks, trade names or marks (whether or not registered or capable of registration) (and in respect of Bite Digital) know-how and any other intellectual property rights;
“Client Content”	any data or information provided by Client to Bite Digital in connection with Bite Digital’s performance of the Services including but not limited to any images, photographs, illustrations, graphics, audio clips or text;
“Client Delay”	failure by Client to provide Bite Digital with any information and/or assistance (including but not limited to Client Content) within 3 Business Days of Bite Digital’s request for such information and/or assistance;
“Client Materials”	any and all documentation, stationary, literature used by the Licensor in its business from time to time;
“Modifications”	any alterations or amendments of whatever nature requested by Client to any Deliverable, Specification and/or work Authorisation;
“Parties”	Bite Digital and Client and “Party” shall be construed accordingly;
“Services”	work to be undertaken by Bite Digital for Client and the delivery of the Deliverables as set out in the statement of work annexed to each Work Authorisation;

“Specification”	descriptions, designs, functional and technical requirements for the Services and/or Deliverables annexed to the Work Authorisations;
“Third Party Licence”	agreement for use of Third Party Materials and/or Third Party Services with the third parties supplying such materials and/or services;
“Third Party Materials”	any materials supplied by a third party which is used in the provision of the Service and/or Deliverables;
“Third Party Services”	any service or services supplied by a third party which is used in the provision of the Service and/or Deliverables;
“Timetable”	the timetable for performance of the Services annexed to the Work Authorisation;
“Work Authorisation”	Client’s authorisation in the form set out in Schedule 1 and signed by Client and by Bite Digital together with any attachments or appendices thereto or documents referred to therein, all as may be varied pursuant to Clause 2.2.

- 1.1 A reference to a Clause, Sub-Clause and Schedule shall mean a clause sub-clause or schedule in this Agreement.
- 1.2 Except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting any gender includes all genders and words denoting persons include the firms and corporations and vice versa.
- 1.3 The headings in this Agreement are inserted for convenience of reference only and should not be construed as forming part of this Agreement.
- 1.4 If the terms in the Work Authorisation are inconsistent with the terms in this Agreement, the terms in this Agreement will prevail.

1. Provision of Services

- 1.1 In consideration of the payment of the Charges, Bite Digital shall provide the Services to Client in accordance with the provisions of this Agreement.
- 1.2 Where Client requires any change to a Work Authorisation it shall notify Bite Digital of such requirement and Bite Digital shall provide Client with a quote for the requested change and an assessment of the impact on other elements of the Work Authorisation. Client shall have 5 Business Days to accept the quote, failing which it shall lapse and the Work Authorisation shall continue unamended. If

Client accepts the quote within the said 5 Business Days, the Work Authorisation shall be deemed amended accordingly.

- 1.3 Unless otherwise agreed in writing, Bite Digital shall only be obliged to provide the Services (including travelling time) during Business Days.

2. Terms

This Agreement shall come into force on the date on which it is signed by the Parties and shall remain in effect until terminated in accordance with clause 13.

3. Delivery and Acceptance

- 3.1 Bite Digital shall use reasonable endeavours to comply with the Timetable.
- 3.2 Within 5 Business Days of receipt of a Deliverable, Client shall notify Bite Digital in writing of any material defects or errors in the Specification that it discovers.
- 3.3 Bite Digital shall re-deliver a Deliverable incorporating any alterations that are required to rectify any defects, errors or inconsistencies notified to it by Client under Clause 4.2 and the provisions of Clause 4.2 shall apply to the redelivered Deliverable.
- 3.4 If no notification is made under Clause 4.2 then Client shall notify Bite Digital in writing of its acceptance of the deliverable within 5 Business Days of receipt of delivery or re-delivery as appropriate, failing which the Deliverable shall be deemed as accepted by Client.

4. Charges, Fees and Records

- 4.1 Client shall pay Bite Digital the Charges in accordance with the payment schedule annexed to the Work Authorisation.
- 4.2 Client shall pay Bite Digital's invoices within 10 Business Days of the date of each invoice.
- 4.3 Where Bite Digital agrees (at the request of Client) to provide the Services during periods other than Business Days, Bite Digital may increase the Charges for work undertaken during such periods.
- 4.4 Client shall pay all sums due to any third party identified in the Work Authorisation as entitled to receive any payment in connection with any Third Party Materials and/or Third Party Services.
- 4.5 Client agrees to reimburse travel, accommodation and subsistence expenses incurred by Bite Digital in connection with the provision of the Services.
- 4.6 Bite Digital reserves the right to charge Client interest in respect of the late payment of any sums due under this Agreement (as well after as before judgement) at the rate of 3% above the base rate from time to time of Barclays Bank Plc from the due date until payment in full is received. Interest shall be calculated on a daily basis and compounded monthly.

- 4.7 Should Client have any query over the content of any invoices issued by Bite Digital in respect of the Charges, it shall so notify Bite Digital within 5 Business Days of the date of the relevant invoice, failing which Client shall be deemed to accept such invoices.
- 4.8 All amounts stated are exclusive of VAT which shall be paid by Client at the then prevailing rate subject to receipt of a valid VAT Invoice.

5. Intellectual Property Rights

- 5.1 Client acknowledges that the Intellectual Property Rights in the Bite Digital Materials are and shall remain the property of Bite Digital or its licensors (other than Client) as the case may be and that Client will not obtain any rights in the Intellectual Property Rights in the Bite Digital Materials other than expressly granted to it under this Agreement.
- 5.2 Bite Digital acknowledge that the Intellectual Property Rights in Client Content is and shall remain the property of Client or its licensors (other than Bite Digital) as the case may be and that Bite Digital will not obtain any rights in the Intellectual Property Rights in Client Content other than expressly granted to it under this Agreement.
- 5.3 Client grants to Bite Digital a non-exclusive, royalty-free licence to use Client Content as is necessary for Bite Digital to carry out its obligations under this Agreement.
- 5.4 Following the receipt of payment in full of all outstanding invoices for the Services, Bite Digital grants Client a non-exclusive, non-transferable, restricted licence to use the Bite Digital Materials within the Deliverables for Client's own business purposes during the continuance of this Agreement and subject to Client:
 - 5.4.1 Not make any copies (except for up to one back-up copy for security or disaster purposes only which shall be kept secure in Client's possession);
 - 5.4.2 Ensuring that proprietary notice of Bite Digital and its licensors are reproduced on all copies;
 - 5.4.3 Not sub-licensing, leasing, modifying, adapting, translating or (except where permitted by law) reverse engineering or decompiling the Bite Digital Materials or creating any derived products from it or merging it with any other materials whatsoever without Bite Digital's express written consent;
- 5.5 Client shall promptly notify Bite Digital of any third party infringement or alleged third party infringement of the Bite Digital Materials that Client becomes aware of or has reason to suspect during the continuance of this Agreement.
- 5.6 At intervals of not less than six months Bite Digital may request in writing and, if so, Client shall promptly provide a certificate signed by a duly authorised officer of Client identifying, at the date of such request:
 - 5.6.1 The equipment upon which the Deliverables are stored and used;
 - 5.6.2 The location of such equipment;

5.6.3 The number of back-up copies of the Deliverables and their location;

5.6.4 Client Materials currently used.

5.7 Client may transfer the Deliverables to other equipment with Bite Digital 's prior written approval (which will not be unreasonably withheld) subject to Client paying any additional amounts due under any Third Party Licences or which in Bite Digital 's opinion reflect any increase in the scope of the licence originally granted.

6. Hosting

6.1 The Bite Digital Service is integrated into the worldwide web and subject to the payment in full, of the Charges by Client, Bite Digital will use its reasonable endeavours to make the Software available to Client via the worldwide web.

6.2 Client is aware and acknowledges that the worldwide web is comprised of many networks and connections outside the control of Bite Digital and that Bite Digital cannot, in any way warrant availability of the Software on the worldwide web at any time.

6.3 Bite Digital 's hosting of the Software is made via a third party internet service provider and Client hereby acknowledges that such third party internet service provider may have its own policies in respect of hosting and may also take any action independently of Bite Digital .

6.4 Bite Digital shall notify Client of any notice it receives from the third party internet service provider referred to in clause 5.3 stating that it is no longer able to work with the Bite Digital system.

6.5 Client shall provide Bite Digital with at least 5 day's notice of a forecast of an increase in traffic likely to be directed to the Software. In the absence of any notification of normal levels of traffic volume, Bite Digital will assume that the normal traffic volume will be the aggregate of the last three calendar months usage.

6.6 Client shall provide Bite Digital with at least 4 calendar week's notice of the estimated traffic volume increase it expects to occur because of any advertising campaigns or publicity (including but not limited to television, radio and newspaper) which may increase the normal traffic volume on the Software. Upon receipt of such notification, Bite Digital shall assess its capacity and inform Client of any Additional Charges that may be made to accommodate such capacity.

6.7 Client is solely responsible for the accuracy, legality, currency and compliance of the Client Material and will solely be liable for any false, misleading, inaccurate, infringement or actionable material contained or referred to therein.

6.8 Client is solely responsible for maintaining the confidentiality and security of its internet account usage including use of its unique log on identification [**which will be provided to it by Bite Digital on the Commencement Date**];

6.9 Client acknowledges and agrees that Bite Digital may be required by law to monitor the content and traffic of the Software and if necessary give evidence of the same together with the use of any log on identification to support or defend any dispute or actionable cause or matter which arises in relation to the same;

- 6.10 Client acknowledges that Bite Digital makes no warranty that the hosting service provided under this Agreement or the Servers will be continually available at 24 x 7 x 365 but will use its reasonable endeavours to keep down time to a minimum.
- 6.11 Client hereby accepts that the hosting service provided under this Agreement and the Servers “as is” with any faults or failings and without any representation, warranty or guarantee whatsoever express or implied without limitation any implied warranty of accuracy, completeness, continuity of service, connectivity, merchantability, fitness for a particular purpose or non infringement.

7. Client Participation

- 7.1 Client acknowledges the Dependencies and shall comply with them in a timely manner.
- 7.2 Client agrees to fully co-operate with Bite Digital by making its management and employees available by telephone or in person to provide information, equipment, services, support, answer questions and provide such other assistance as may be reasonably required by Bite Digital in its provision of the Services.
- 7.3 In the event of Client Delay, the date of performance or delivery as detailed in the Timetable for the Services and/or Deliverables and the date of performance by Bite Digital of any other under performed obligation under this Agreement shall be extended for a period equal to the duration of Client Delay plus 5 Business Days. Client Delay shall not relieve Client of any obligations or otherwise extend any obligation of Client under this Agreement.
- 7.4 Client agrees to provide all Client Content to Bite Digital in the electronic format specified by Bite Digital from time to time.

8. Third Party Materials and Services

- 8.1 If Third Party Materials and/or Third Party Services are supplied, Client acknowledges that it may be required to enter into a Third Party Licence and that Bite Digital may withhold any Services or Deliverables until Client has confirmed in writing to Bite Digital that it has entered in to such Third Party Licences. If requested by Bite Digital, Client shall provide Bite Digital with a copy of any such licence it has entered in to.
- 8.2 Client shall obtain all necessary approvals, authorisations, licences, consents and waivers necessary for Bite Digital to use all Client Content as envisaged by this Agreement.

9. Bite Digital 's Warranties

- 9.1 Provided that Client continually complies with each of its obligations set out in this Agreement, Bite Digital warrants that:
- 9.1.1 The Services will be provided with reasonable skill and care by suitably qualified staff;

- 9.1.2 For a period of ten (10) days from the date of delivery of the Deliverables will operate under normal use substantially in accordance with the Specifications;
- 9.1.3 To the best of Bite Digital 's knowledge, the Bite Digital Materials do not infringe the Intellectual Property Rights of any third party.
- 9.2 The warranties given in Clause 10.1.2 and 10.1.3 shall not apply if:
 - 9.2.1 Client its agent(s) or its employees have modified or tampered with any of the Bite Digital Materials in any manner;
 - 9.2.2 The breach of warranty is attributable to the use of the Deliverables in combination with other materials or software;
 - 9.2.3 The Deliverables are used in an environment other than that for which they were originally supplied;
 - 9.2.4 The Deliverables are used on equipment other than the Client Equipment.
- 9.3 UNLESS EXPRESSLY SET OUT IN THIS AGREEMENT ALL CONDITIONS, WARRANTIES, REPRESENTATIONS (UNLESS MADE FRAUDULENTLY) OR OTHER TERMS IMPLIED BY STATUTE OR LAW ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.
- 9.4 IN THE EVENT THAT BITE DIGITAL BREACHES ANY OF THE WARRANTIES ABOVE WITH REGARDS TO THE DELIVERABLES OR THE SERVICES, BITE DIGITAL SHALL RE-DELIVER OR RE-PERFORM THE DEFECTIVE OR DEFICIENT DELIVERABLES OR SERVICES WITHOUT CHARGE, OR AT ITS OPTION REFUND THE CHARGES FOR THOSE DELIVERABLES OR SERVICES OR AN APPROPRIATE PROPORTION OF SUCH CHARGES. SUBJECT TO CLAUSE 12.2.1, THIS SHALL BE BITE DIGITAL 'S ONLY LIABILITY FOR BREACH OF THIS WARRANTIES UNDER THIS AGREEMENT.
- 9.5 Bite Digital shall indemnify Client against any reasonable damages and expenses incurred by Client arising directly from any breach or alleged breach of the warranty in sub-Clause 10.1.3 provided that:
 - 9.5.1 Client notifies and provides Bite Digital full written details of any claim or action by any third party that is likely to give rise to a claim under the indemnity within 7 days of becoming aware of the same;
 - 9.5.2 Client is not in breach of this Agreement;
 - 9.5.3 Client does not, at any time, compromise, prejudice, or settle any such claim or action;
 - 9.5.4 Bite Digital is given sole conduct of the defence and settlement of any such claim or action;
 - 9.5.5 Client provides Bite Digital with such assistance, authority, documents and information as it may reasonable require in relation to any such claim or action and defence or settlement thereof.

10. Client's Warranties and Indemnities

10.1 Client warrants that:

10.1.1 Client Content and Clients Material do not and shall not contain any content, materials, advertising or services that are materially inaccurate, breach or infringe any applicable law, regulation or rights of any third party;

10.1.2 It is the legal proprietor of Client Content and Licensees Material, or otherwise has the right to use Client Content and Licensees Material in the manner required under this Agreement.

10.2 Client hereby indemnifies and keeps Bite Digital indemnified against all actions, proceedings, claims, demands, damages and reasonable costs and expenses (including legal costs) incurred by Bite Digital in consequence of any breach or alleged breach of the above warranties.

11. Limitation of Liability

LICENSEE'S ATTENTION IS DRAWN TO THIS CLAUSE 12 WHICH SEEKS TO LIMIT BITE DIGITAL 'S LIABILITY

11.1 Save and to the extent set out in this Clause 12, Bite Digital shall not have any liability to Client in respect of any breach of its contractual obligations arising under this Agreement and any representation, statement, tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with this Agreement.

11.2 Bite Digital 's liability to Client:

11.2.1 For death or injury resulting from Bite Digital 's own negligence or that of its employees or for fraudulent misrepresentation shall not be limited;

11.2.2 Subject to Clause 12.2.1, resulting directly from Bite Digital 's negligence, or that of its employees, agents or sub-contractors for any one event or series of connected events, shall not exceed £ 250,000; and

11.2.3 Subject to Clauses 12.2.1 and 12.2.2, all other loss or damage arising out of or in connection with this Agreement shall not exceed the Charges for the Work Authorisation to which such loss or damages relates.

11.3 Subject to Clause 12.2.1 Bite Digital shall not have any liability to Client:

11.3.1 Unless a claim is brought within 6 months of the date Client was or ought to have been aware of the circumstances giving rise to the claim.

11.3.2 To the extent that it is attributable to Client Delay or Client's failure to comply with any Third Party Licence.

11.4 Subject to Sub-Clause 12.2.1, Bite Digital shall not be liable to Client for:

11.4.1 Loss of reputation;

11.4.2 Loss of profit;

11.4.3 Loss of goodwill;

11.4.4 Loss of corruption of/or damage to data;

11.4.5 Any type of special, indirect or consequential loss or damage irrespective whether Client has been advised of the possibility of such loss or damage.

11.5 If any Deliverable includes or will include any information provided by third parties or links to third party web sites, Client hereby acknowledges that Bite Digital shall not be held liable in any way whatsoever for any such third party information and/or links. Further, Client hereby acknowledges that Bite Digital makes no representations as to the content, accuracy and/or availability at any time of such third party information or links;

12. Termination of this Agreement

12.1 Bite Digital may terminate this Agreement forthwith by written notice to Client if;

12.1.1 Client has not made any payment under this Agreement or any Third Party Licence by the due date;

12.1.2 in the sole discretion of Bite Digital, Client carries out or causes or permits any act or omission which has the direct or indirect effect of bringing Bite Digital into disrepute in any manner or form.

12.2 Either Party may terminate this Agreement immediately by notice in writing to the other if;

12.2.1 The other commits a material breach of any term of this Agreement and which (in the case of a breach capable of being remedied, other than late payment) shall not have been remedied within [30] days of a written request to remedy the same;

12.2.2 The other shall convene a meeting of its creditors, or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the dissolution, winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);

12.2.3 Non-performance pursuant to Clause 17 continues for more than 90 consecutive days.

13. Effect of Termination of this Agreement

- 13.1 Any termination of this Agreement shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provisions hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 13.2 On termination all Charges for any Services or Deliverables provided up to termination shall immediately fall due and payable.
- 13.3 Upon termination Bite Digital will:
 - 13.3.1 Cease the provision of any Services;
 - 13.3.2 Prepare and submit to Client a breakdown of all Services and Deliverables up to the date of termination;
 - 13.3.3 Prepare and submit to Client a breakdown of all Services and Deliverables referred to in Sub-Clause 14.3.2;
 - 13.3.4 Deliver to Client all Deliverables (in their then current state) for which invoices have been submitted.
- 13.4 Within 7 days of the date of Bite Digital 's invoice pursuant to Sub-Clause 14.3.3, Client will make payment in full to Bite Digital in respect of such invoice.

14. Non-Solicitation

- 14.1 During this Agreement and for a period of 6 months thereafter, neither Party shall directly or indirectly Employ or solicit the services of any of the other Party's staff who have been engaged in the performance of this Agreement. "Employ" shall, for the purpose of this Clause 15.1, mean the engagement of such person as an employee, director, sub-contractor or independent contractor.
- 14.2 In the event that a Party is found to be in breach of Clause 15.1, then that Party shall pay to the other Party by way of liquidated damages, an amount equal to 6 months of the final gross salary of the person so employed or engaged to be payable on the date when such employee is first employed or the services are first performed. The provision shall be without prejudice to the other Party's right to seek injunctive relief.

15. Confidentiality

- 15.1 Each Party to this Agreement shall keep strictly confidential the terms and conditions of this Agreement (including information set out in or annexed to any Schedule and work Authorisation and include all such information as may be amended or supplemented from time to time during the continuance of this Agreement) and all such other information concerning the business, finances, technology or affairs of the other Party which, by its nature, should be assumed to be confidential, to include, but not limited to, the negotiations relating to and the subject matter of this Agreement. Such information shall not be disclosed to any third party other than the employees of the Party concerned and the Party subject to this obligation shall not use any such information for the purpose other than the performance of the Agreement. Further it is agreed by the parties that each shall

use its reasonable endeavours to procure that its employees act in a manner consistent with the obligation of confidentiality set out in this Agreement.

15.2 Either Party may disclose the information which would otherwise be confidential if and to the extent that it is:

15.2.1 Required by law;

15.2.2 Information which has come into the public domain through no fault of the Party receiving the information;

15.2.3 Reasonably required to be disclosed to the agents of such Party, subject to such agent providing an undertaking in terms substantially similar to the terms set out in this Clause; or

15.2.4 The other Party has given prior written approval to the disclosure;

Provided that the Party disclosing the information under this Clause 15.2 shall notify the other Party of its intention or obligation to disclose the information prior to such disclosure being affected.

16. Force Majeure

A Party will be excused from performance of its obligations under this Agreement (other than payment of the Charges) if and to the extent that such performance is hindered or prevented directly or indirectly by reason of any strike, lock-out, labour disturbance, government action, riot, armed conflict, interruption in power supply or telecommunications or defective computer equipment, Act of God or any other matter whatsoever beyond its control (having acted reasonably and prudently).

17. No Right of Set-Off

All amounts due under this Agreement shall be paid in full without any deduction or withholding other than as required by law and Client shall not be entitled to assert any credit, set-off or counterclaim against Bite Digital in order to justify withholding payment of any such amount in whole or in part.

18. Notices

18.1 Any notice, request, instruction or other document to be given by a Party under this Agreement shall be in writing and delivered by hand, sent by pre-paid first class post, by facsimile transmission [or other electronic means] to the recipient's usual fax number [or e-mail address] or such other address, fax number [or e-mail address] which may be notified by that Party from time to time for this purpose.

18.2 A notice shall be deemed to have been received if delivered by hand, at any time of deliver; if sent by facsimile or other electronic means during the Business Day of transmission as long as the sender can show satisfactory transmission; and if sent by post, 48 hours after porting.

19. General

19.1 This Agreement constitutes the whole agreement and understanding of the parties and supersedes all prior agreements, representations (other than fraudulent

representation), arrangements and understandings in relation to its subject matter and no addition or modification to its terms shall form part of this Agreement unless expressly accepted in writing by an authorised representative on behalf of each Party.

- 19.2 A person who is not a Party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 19.3 Client shall not assign, transfer, sub-contract, delegate or in any way dispose of its rights and/or obligations under this Agreement without the prior written consent of Bite Digital . Client acknowledges that Bite Digital may assign sub-contract or delegate any of its rights and/or obligations under this Agreement provided that any act or omission or any sub-contractor or delegate shall be deemed to be an act or omission of Bite Digital 's.
- 19.4 Time shall not be the essence save with regard to the Charges and Payment provisions in Clause 5.
- 19.5 If any provisions of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or party, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 19.6 The waiver by either party of a breach of default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the party of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

20. Governing

- 20.1 This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts with regard to any claim or matter arising out of or in relation to this Agreement.

21. Web Design

- 21.1 Bite will be provided with any existing graphics and all site content in PC data format. Any downloadable documents will be provided to Bite in the finished state (eg PDF) and will not require manipulation by Bite.
- 21.2 Bite services do not include providing Internet access, email sending or retrieval. These services should be obtained from an appropriate ISP. Email forwarding can be included, but without a service level agreement.
- 21.3 Bite assume all of the web site text is to be supplied by the client. We can recommend copywriters (at additional cost) if required.

- 21.4 The costings exclude external fees or charges from third parties for web site content, such as library images, photographs, translations, news-feeds, map services, credit card clearance fees or royalties for music. If this content is required, Bite can source suppliers and provide options in this respect upon request.
- 21.5 Unless database data capture facilities are specifically requested, online forms will forward the information as an email to a specific email address.
- 21.6 The Bite web design credits, logo and web link will be included on the site and the right is reserved to use the site images, client logo and client name on the Bite client list and for other marketing purposes.
- 21.7 Where database functionality is included in the proposal, ASP SQL databases will be used (unless otherwise stated). Test data will be input by Bite into database section of the site and the client will be responsible for inputting the actual data. Content input services can be quoted for an optional extras if required.
- 21.8 Upon receipt of the final payment for the project, the ownership of the HTML code passes to the client. Where pre-existing code is used such as the Bite content management system, Bite retains the ownership of the source code and licences the client to use the facilities.
- 21.9 We assume that artwork or data passed to us does not need to be returned, unless specified otherwise.
- 21.10 Unless stated otherwise, the hosting and support quote assumes a limit of 5 Gig of data usage per month. Excess data charges can be quoted if you wish to have a higher level of data traffic.
- 21.11 Documentation of the solution is not assumed to be required. This can be provided at additional cost if specifically requested.
- 21.12 It is the responsibility of the client to determine the wording of the entire web site content, including (but not limited to) terms and conditions, eCommerce trading policy, copyright, data protection and privacy statements. Bite do not provide legal advice and strongly recommend that the client consults a suitable solicitor for such advice.
- 21.13 Online payments are assumed to be taken by PROTX using PROTX servers - additional charges will apply if any other system is required. The client is responsible for securing a merchant account with a bank, which is compatible with the PROTX system.
- 21.14 We do not charge for 'bug' fixes within 6 months of a new system being implemented - after this time, we assume that usage and testing will have

removed all but a few minor 'unforeseen' issues, which are then taken care of within the maintenance contract. 'Bugs' are defined as errors in the code which do not conform to the specification (not user preferences or items not included in the original specification).

- 21.15 The timescales agreed in the specification assume that we receive the signed Key Stage sign off forms within 4 days of being sent to the client. If this period is exceeded, the project may be delayed and new timescales will be provided by Bite (taking into account our other scheduled work). The cost of the project may also increase due to our increased project management costs.
- 21.16 The client will have the opportunity to request a maximum of 3 lists of amendments for each key stage of the project. Amendments are limited to preferences, not changes to the functional specification.

22. Internet Marketing

- 22.1 Due to the rapidly changing nature of the Digital Marketing industry, Bite Digital Ltd reserves the right to change or modify any of the Terms or Conditions contained here at any time; by issuing a written 'Notice of Changes to Terms and Conditions' letter or email; a minimum notice period of 30 days will be given before the changes take effect, to enable You to state any objections to the proposed changes. In the absence of any written correspondence being received by Us from You stating your objections to the changes within this 30 day notice period, such changes will be treated as accepted by You and will form part of the contract.
- 22.2 You shall not provide Us with any information or with any materials that infringe the rights of any other person (including any intellectual property rights); and None of the information or materials supplied by You to Us shall be libellous, obscene, or abusive nor shall it breach any law or regulation or give rise to any legal claims of any sort and Your Website shall likewise not display or contain any information or materials of the kinds referred to in this clause.
- 22.3 You acknowledge that in relation to the search engine service any code and information uploaded to Your website is removed immediately the agreement period has either lapsed or cancelled for whatever reason by either party.
- 22.4 There may be occasions when Your website or the websites of any third parties may be out of action for limited periods due to technical difficulties or routine maintenance and Bite Digital Ltd Online Marketing shall not be liable to You for any downtime of this sort.
- 22.5 Bite Digital Ltd internet marketing services (including, but not limited to Search Engine Optimisation (SEO) and Pay Per Click (PPC) will be performed to the best of our knowledge and ability, but do not guarantee any specific outcome or search engine ranking result.
- 22.6 Bite Digital Ltd Online Marketing agree to optimise Your website by adding code, structure and information and to provide its other services and perform its obligations insofar as agreed under the Agreement but it is specifically agreed that

optimisation of Your website in accordance with the terms of the Agreement does not guarantee any particular level of traffic to Your website throughout the term of the Agreement.

- 22.7 Bite Digital Ltd Online Marketing's SEO service does not include paid links, including directory links, unless explicitly agreed by Bite Digital Ltd, and paid for by the client.
- 22.8 You retain Your copyright on all graphics, content and other materials supplied by You to Bite Digital Ltd.
- 22.9 You must indemnify Bite Digital Ltd in respect of all actions, proceedings, cost demands and claims arising from any breach of copyright resulting from You not obtaining the necessary authority and/or permissions for use of graphics, content or other materials.
- 22.10 Bite Digital Ltd retain the copyright on layout and code of their webpages.
- 22.11 Your website will be added to the Bite Digital Ltd Online Marketing Portfolio.
- 22.12 Bite Digital Ltd excludes itself from all and any liability for loss or damage caused by any inaccuracy, omission, delay or error, whether the result of negligence or other cause in the provision of any of its services.
- 22.13 It is Your responsibility to ensure that the website graphics, content and materials are legal. You must indemnify Bite Digital Ltd Online Marketing in respect of all actions, proceedings, cost demands and claims arising from illegal content.
- 22.14 Bite Digital Ltd Online Marketing's total liability to You shall not exceed the aggregate of any sums paid to Us by You during the calendar year in which the applicable cause of action against Us arose and it expressly excludes loss or potential loss of profits that You may incur
- 22.15 You acknowledge that amounts charged by Us to You under the Agreement have been calculated with reference to the exclusions of liability set out in clause 7 but You acknowledge that at Your request Bite Digital Ltd Online Marketing would have been prepared to agree a higher limit of liability on the understanding that You pay any additional insurance premiums that may be required to increase Bite Digital Ltd Online Marketing's insurance cover in respect of its liabilities to You to the amount of the agreed cap on Bite Digital Ltd Online Marketing's liability.
- 22.16 The limitation on Bite Digital Ltd Online Marketing's liability set out in clause 7 shall not apply:
 - (a) in respect of death or personal injury caused by Bite Digital Ltd Online Marketing's negligence (for which no limit of liability shall apply); or

(b) in those circumstances in which Bite Digital Ltd and You have agreed a higher limit on Bite Digital Ltd liability (in which event that higher limit shall apply).

22.17 Neither party shall be liable to the other for its failure to comply with its obligations under the Agreement caused by anything beyond its reasonable control.

22.18 No guarantees can be made about any website promotion activity as this is subject to the search engine algorithms, which change on a frequent basis and are not released to the public. When submitting a new site to a search engine, it is not immediately available, and the process can take several months.

22.19 Interest may be charged by Bite Digital Ltd from the date on which the payment in question fell due to the date on which that payment (including all applicable Interest) is paid in full and Interest shall be charged on a daily basis with reference to a year consisting of 365 days and with all unpaid interest compounded monthly.

22.20 In the event that any one or more of the provisions of this agreement and/or order form are deemed invalid, illegal or unenforceable, the remaining provisions shall be unimpaired and the agreement and/or order form shall not be void for this reason alone. Such invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision which comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

22.21 If You fail to provide the agreed graphics, content or materials within 60 days from the order date, Bite Digital Ltd reserves the right to make an additional charge.

22.22 You may not assign the Agreement without Bite Digital Ltd Online Marketing's prior written consent.

22.23 Time shall be of the essence for all payments due to Bite Digital Ltd Online Marketing under the Agreement and in relation to the performance of Your obligations generally.

22.24 The contract duration is 12 months, unless otherwise stated on the order form. The contract will automatically renew unless written notice to lapse the contract is received by Bite Digital at least 30 days before the renewal date.

IN WITNESS whereof the parties have executed this Agreement on the day and year first before written.

SIGNED for and on behalf of)
BITE DIGITAL LIMITED)
by)

Director

Director/Secretary

SIGNED for and on behalf of)
LICENSEE)
by)

Director

Director/Secretary

SCHEDULE 1

WORK AUTHORISATION

No:	
Date:	
Client:	
Client Equipment:	
Master Service Agreement No:	Date

Attached			
Document	Yes	No	TBA¹
Deliverables			
Payment Schedule			
Timetable			
Specification			
Additional Terms ²			
Signed on behalf of Bite Digital :	Signed on behalf of Client		

¹ Once agreed in writing these documents shall form part of this Work Authorisation as if originally annexed to it.

² If included, these shall prevail where inconsistent with any other provisions of this Agreement.