

## DATED

## PARTIES

(1) **LEEPECK GROUP LIMITED** incorporated and registered in England and Wales with company number 06588438 whose registered office is at Prospect House 50 Leigh Road, Eastleigh, Hampshire SO50 9DT (“LPG”).

(2) ..... **LIMITED** incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ] (“Customer”).

## BACKGROUND

The parties have agreed that LPG shall provide the Customer with website design and development, software and related services on the terms and conditions set out in this Agreement.

## AGREED TERMS

### 1 INTERPRETATION

1.1 Unless the context otherwise requires, the following definitions and rules of interpretation shall apply in this Agreement:

“Acceptance” means the acceptance or deemed acceptance of the Website by the Customer pursuant to clause 3;

“Acceptance Certificate” means the form of certificate served on LPG by the customer to acknowledge Acceptance;

“Acceptable Use Policy” means LPG’s acceptable use policy as set out at [www.leepeckgroup.com](http://www.leepeckgroup.com);

“Acceptance Tests” means the tests to be carried out on the Website as set out in clause 3;

“Background Rights” means those Intellectual Property Rights which LPG can demonstrate existed prior to the date of the Proposal(s) or were created during the term of this Agreement but outside the scope of the Services and which are not intended for the exclusive use of the Customer;

“Business Day” means any day (other than a Saturday or Sunday) when banks are generally open for normal business in London;

“Change”

means the procedures set out in Clause 14;

“Confidential Information”

means all information whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

(i) identified as confidential at the time of disclosure; or

(ii) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure;

“Content”

means all materials, graphics, animation, audio and/or digital video components, other than the Software whether created by LPG or provided by the Customer for the purposes of developing the Website, including without limitation any Intellectual Property Rights therein.

“Effective Date”

means [ ];

“Fees”

means the Fees in respect of the Services set out in Schedule 4;

“Force Majeure Event”

means any event arising which is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulation, fire, flood, disaster, civil riot or war);

“Hosting Services”

means the provision of shared Website hosting services and/or co-location/dedicated server services in accordance with LPG’s Standard Terms of Business from time to time;

“Intellectual Property Rights”

means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade

|                         |   |                              |  |
|-------------------------|---|------------------------------|--|
|                         | secrets, business names and domain names, trade marks, service marks, trade names, patents, utility models, design rights, semiconductor topography rights, database rights and all rights in the nature of unfair competition rights or right to sue for passing off;  | “Specification”              | means the specification for the Website set out in Schedule 2;   |
| “Non-Supplier Defects”  | means those defects described in clause 3.5;  | “Standard Terms of Business” | means Leepeckgroup’s standard terms of business which may be found at <a href="http://www.leepeckgroup.com">www.leepeckgroup.com</a> ;   |
| “Personal Data”         | means information defined as such in the Data Protection Act 1998 or any other law or regulation applicable to the information;   | “Third Party Products”       | means those third party software products set out in Schedule 2;   |
| “Pre Payment Costs Out” | means any third party expenses or disbursements that are payable either prior to or during the provision of the Services;   | “Website”                    | means the website to be developed by LPG [and hosted by LPG] pursuant to this Agreement;   |
| “Project”               | means the provision by LPG of the Services as set out in this Agreement for the delivery of the Proposal(s);  | “Working Day”                | means a day (other than a Saturday or a Sunday) on which the clearing banks in the City of London are open for business; and   |
| “Project Plan”          | means the timetable within which LPG will implement the Project as set out in Schedule 1 which may if agreed will include provisions for written and/or oral progress reports by LPG, documentation standards, lists of any special equipment to be procured by LPG or provided by the Customer for use in performance of the Project Acceptance Tests and Specification;         | “Users”                      | means any third party or users of [the Services] [Website].  |
| “Services”              | means the design and development services to be provided pursuant to this Agreement as set out in Schedule 3;   | 1.2                          | Clause and Schedule headings shall not affect the interpretation of this Agreement.  |
| “Software”              | means the software and computer programming code (other than source code unless specified) which is not background IPR as modified from time to time which operates, causes, creates, directs, manipulates, accesses or otherwise affects the Website commissioned by the Customer as specified in Schedule 2 and provided on LPG’s Standard Terms of Business from time to time; | 1.3                          | References to clauses and schedules are (unless otherwise provided) references to the clauses in and schedules to this Agreement.  |
|                         |   | 1.4                          | In the event and to the extent only of any conflict between the clauses of this Agreement and the schedules, the clauses shall prevail.  |
|                         |   | 1.5                          | Words in the singular include the plural and in the plural include the singular.   |
|                         |   | 1.6                          | A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendments, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.   |
|                         |   | 1.7                          | References to “including” and “include(s)” shall be deemed to mean respectively including without limitation and include(s) without limitation. References to “content” include any kind of text, information, images or audio or video material which can be incorporated in a website for access by a Visitor to that website. |
|                         |   | <b>2</b>                     | <b>SCOPE OF THE PROJECT</b>  |
|                         |   |                              | LPG shall:   |
|                         |   | 2.1                          | design, develop and deliver the Website in accordance with the Project Plan;   |
|                         |   | 2.2                          | provide the Services, and where agreed between the parties, the Hosting Services in accordance with agreed service levels.   |

### 3 DEVELOPMENT AND ACCEPTANCE

3.1 Once LPG has completed design and development of the Website in accordance with the Project Plan, LPG shall invite the Customer to attend the Acceptance Tests. The procedure set out in this clause 3 shall be repeated in respect of any further development works agreed by the parties from time to time.

3.2 The Acceptance Tests shall test compliance of the Website with the Specification. The form and detail of such tests shall be set out in the Project Plan.

3.3 Acceptance of the Website shall occur when the Website has passed the Acceptance Tests. The Customer shall sign the Acceptance Certificate in respect of the Website and return it to LPG as soon as reasonably practicable following Acceptance.

3.4 In the event that any Acceptance Tests are not passed, the failures that cause the relevant tests to be failed shall be drawn up and documented by LPG and presented to the Customer for discussion as to how best to rectify such defects promptly in order to ensure that the Website passes the Acceptance Tests on a retest.

3.5 If any failure to pass the Acceptance Tests results from a defect specified in accordance with Clause 3.4 which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom LPG has no responsibility ("Non-Supplier Defect"), the Website shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect, and the Customer shall sign and return the Acceptance Certificate to LPG within five Business Days of Acceptance. LPG shall provide all assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products. If such assistance is requested, the Customer shall pay LPG in full for all such additional services and products at LPG's then current fees and prices.

### 4 THIRD PARTY PRODUCTS

The Third Party Products shall be supplied in accordance with the relevant licensor's standard terms. The one-off licence fee for such Third Party Products is included in the Fees payable pursuant to clause 7.1.

### 5 CUSTOMER OBLIGATIONS

5.1 The Customer shall:

5.1.1 co-operate with LPG in all matters relating to the Services in a timely manner;

5.1.2 provide, in a timely manner, such Customer Content and other information as LPG may require to perform the Services, and ensure that such Content is accurate;

5.1.3 obtain and maintain all necessary licenses and consents and comply with all relevant legislation in relation to the Services and the use of Customer Content; and

5.1.4 Comply with the terms of LPG's Acceptable Use Policy.

5.2 The Customer shall be liable to pay LPG, on demand, all reasonable costs, charges or losses sustained or incurred by LPG (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those losses arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from Your fraud, negligence, failure to perform or delay in the performance of any of Your obligations under these Terms.

### 6 PROJECT MANAGEMENT

Each party shall appoint a project manager who shall:

6.1 Provide professional and prompt liaison with the other party; and

6.2 have the necessary expertise and authority to commit the relevant party.

### 7 FEES AND PAYMENT

7.1 Following Acceptance, LPG shall issue a VAT invoice in respect of the Fees, and the Customer shall pay to LPG the Fees calculated correctly in accordance with Schedule 5 and set out in such invoice within 30 days of receipt of it, except for any amount in respect of which there is a genuine dispute.

7.2 All Fees are exclusive of VAT.

7.3 The Customer shall not be permitted to set-off any liability to LPG (however such liability arises and whether or not it is present, future, liquidated or unliquidated).

### 8 WARRANTIES

8.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform this Agreement.

8.2 LPG shall perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards.

8.3 LPG warrants:

8.3.1 that the Content and Software it creates or licences to the Customer shall perform as stated in the Specification; and

8.3.2 any part of the Website and Content developed solely by LPG will be original and will not infringe any Intellectual Property Rights of others.

8.4 LPG does not warrant the Website or the Services against failure of performance due to failure of computer hardware or communications system for whatever reason other than directly as a result of the default of LPG.

## 9 LIMITATION OF REMEDIES AND LIABILITY

9.1 Nothing in this Agreement shall operate to exclude or limit either party's liability for:

1.7.1 death or personal injury caused by its negligence; or

9.1.1 any breach of the terms implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or

9.1.2 fraud; or

9.1.3 any other liability which cannot be excluded or limited under applicable law.

9.2 Unless otherwise set out in this Agreement, neither party shall be liable to the other for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

9.3 Subject to clause 9.1, each party's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this Agreement whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed the total Fees payable by the Customer to LPG in that calendar year.

## 10 INTELLECTUAL PROPERTY RIGHTS

10.1 Subject to the provisions of clause 10.2 all Intellectual Property Rights in the Website (including in the content of the Website) arising in connection with this Agreement shall be the property of the Customer, and LPG hereby assigns all such Intellectual Property Rights to the Customer, provided that the Customer has complied with all of its obligations under this Agreement (including for the avoidance of doubt, any obligations relating to payments of Fees and the period of notice).

10.2 Subject to the terms and conditions of this Agreement LPG hereby grants to the Customer a non-exclusive, non-transferable, non-sub-licensable, licence to use any background IPR (including any third party software used by the Customer or provided to the Customer by LPG which is not specifically identified as a Third Party Product) in connection with the operation of the Website

10.3 All rights in and to the Content, the Background IPR, the Software and the Third Party Products delivered by LPG to the Customer which are not expressly granted to the Customer under Section 10.1 and 10.2 above are reserved to LPG. Without

limiting the generality of the foregoing the Customer shall not, and shall not assist, authorise or encourage any third party to reverse engineer, decompile, disassemble any Software, to distribute, licence, rent, sell or lease or otherwise transfer any Software or modify or create derivative works based on the Background IPR.

10.4 The Customer is solely responsible for obtaining all intellectual property rights clearances and/or other consents and authorisations necessary in respect of the names, marks or other materials which are contained in Customer Content and the Customer warrants that its use of such names, marks or materials and any other information, documents or software which it supplies to LPG under this Agreement shall not infringe any third party's Intellectual Property Rights or be otherwise unlawful or illegal.

10.5 The Customer shall indemnify LPG and hold it harmless against all damages, losses and expenses arising as a result of any action or claim in relation to the alleged third party Intellectual Property Rights in the Customer Content.

10.6 The Customer shall maintain the copyright notice specified in writing by LPG on the Website.

10.7 Where, under this Agreement or relevant Service the Customer is permitted to make the Website or the benefit of the other Services set out herein available for use by Users, it will ensure that all such Users will comply with this Clause 10.

## 11 WEBSITE CONTENT

11.1 LPG may require the Customer to publish credits, disclaimers or other materials on the Website as LPG reasonably deems appropriate. In addition, LPG shall have the right to review the Website from time to time and remove or edit content which in its sole discretion LPG considers infringes any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) ("Inappropriate Content"). LPG shall notify the customer immediately if it becomes aware of any allegation that any content on the Website may be Inappropriate Content.

11.2 The Customer shall be solely responsible for the adequacy and accuracy of all Content, information and data provided to LPG and the Customer agrees and acknowledges that LPG shall not be responsible for screening or otherwise monitoring any Content or additional materials added by the Customer or by any third party to any Website or included within the delivery of any of the Services.

11.3 The Customer shall indemnify LPG and hold it harmless against all damages, losses and expenses arising as a result of any action or claim that the Content (other than the Content created by LPG) constitutes Inappropriate Content.

11.4 In agreeing to these terms, the Customer also agrees to be bound by the terms of LPG's Acceptable Use Policy.

## 12 DATA PROTECTION

12.1 LPG warrants that, to the extent it processes any Personal Data on behalf of the Customer:

12.1.1 it shall act only on instructions from the Customer; and

12.1.2 it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

## 13 TERM AND TERMINATION

13.1 This Agreement shall commence on the Effective Date and shall (subject to earlier termination pursuant to this clause 13) terminate automatically [on Acceptance of the Website and payment of all outstanding sums] OR [the first anniversary of the Effective Date, unless the Customer elects to extend the term of this Agreement by a further year.]

13.2 LPG may terminate the Agreement if this Customer fails to pay any sums due to LPG as they fall due.

13.3 LPG may terminate forthwith by notice in writing to the Customer if it:

13.3.1 is in material breach of any of the terms of this Agreement and, in the case of a breach capable of remedy, fail to remedy such breach within [30] days of receipt of written notice giving full particulars of the breach and of the steps required to remedy it;

13.3.2 (being a company) pass a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect;

13.3.3 (being a partnership or other unincorporated association) are dissolved or (being a natural person) die;

13.3.4 become or are declared insolvent or convene a meeting of or make (or propose to make) any arrangement or composition with its creditors; or

13.3.5 have a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or

13.3.6 cease, or threaten to cease, to carry on business.

13.4 The parties' rights, duties and responsibilities shall continue in full force during the agreed period of notice and whether or not there is a period of notice, the Customer shall pay all sums due in respect of work done and expenditure committed by LPG until Termination is effective.

13.5 On expiry of termination of this Agreement:

13.5.1 all licences granted to LPG under this Agreement shall terminate immediately;

13.5.2 Provided that all payments due to LPG have been paid in full, LPG shall promptly return all Customer Content to the Customer, and shall provide to the Customer an electronic copy of the Website (including all content on the Website); [and where LPG provides the Hosting Services, LPG shall provide all such assistance as is reasonably requested by the Customer in transferring the hosting of the Website to the Customer or another service provider, subject to payment of LPG's expenses reasonably incurred]; and

13.5.3 all provisions of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

## 14 CHANGES TO THE PROJECT

14.1 If either party wishes to change the scope or execution of the Services ("Change"), it shall submit details of the requested Change to the other in writing.

14.2 If either party requests a Change, LPG shall, within a reasonable time, provide a written estimate to the Customer of:

14.2.1 the likely time required to implement the Change;

14.2.2 any necessary variations to LPG's Fees arising from the Change; and

14.2.3 any other impact of the Change on this Agreement.

14.3 If the Customer wishes LPG to proceed with the Change, LPG has no obligation to do so unless and until the parties have agreed the necessary variations to LPG's Fees, the Services and any other relevant term of this Agreement to take account of the Change.

14.4 Notwithstanding Clause 14.3, LPG may from time to time and without notice to the Customer, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the Fees for the Services.

14.5 Unless LPG notifies the Customer to the contrary, no agent of, or person employed by or under contract with LPG, has any authority to alter or vary this Agreement in any way.

14.6 No purported cancellation of any Services will be effective unless and until LPG gives to the Customer a written acknowledgement of cancellation. LPG may, as a condition of such acknowledgement, or otherwise on early termination in accordance with this Agreement, impose such reasonable charge for cancellation as LPG considers appropriate, including a charge for any Pre-Payment Costs Out and for any work incurred by LPG at the date cancellation is acknowledged.

14.7 In the event of any such cancellation or amendment, the Customer will reimburse LPG for any charges or Pre-Payment Costs Out We incur to which We are already committed. The Customer shall also pay LPG's Fees covering the cancelled or amended Services, as well as any charges or penalties LPG incurs as a result of the Change or cancellation.

## 15 FORCE MAJEURE

A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take all reasonable steps to mitigate the effect of the Force Majeure Event.

## 16 CONFIDENTIALITY

16.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

16.2 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

16.3 The obligations set out in this clause 16 shall not apply to Confidential Information which the receiving party can demonstrate:

16.3.1 is or has become publicly known other than through breach of this clause 16; or

16.3.2 was in possession of the receiving party prior to disclosure by the other party; or

16.3.3 was received by the receiving party from an independent third party who has full right of disclosure; or

16.3.4 was independently developed by the receiving party; or

16.3.5 was required to be disclosed by governmental authority, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

16.4 The obligations of confidentiality in this clause 16 shall not be affected by the expiry or termination of this Agreement.

## 17 NOTICES

17.1 Any notice, invoice or other communication which either party is required by this Agreement to serve on the other party shall be sufficiently served if sent to the other party as its specified in the Project Plan (or such other address as is notified to the other in writing) as follows:

17.1.1 by hand;

17.1.2 by registered or first class post or recorded delivery; or

17.1.3 by facsimile transmission confirmed by registered or first class post or recorded delivery.

Notices sent by registered post or recorded delivery shall be deemed to be served three (3) Working Days following the day of posting. Notice sent by facsimile transmission shall be deemed to be served on the day of transmission if transmitted before 4.00pm on a Working Day, but otherwise on the next following Working Day. In all other cases, notices are deemed to be served on the day when they are actually received.

## 18 PUBLICITY

18.1 All media releases, public announcements and public disclosures by LPG relating to this Agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the Customer and approved by the Customer prior to release.

18.2 LPG shall be entitled to refer to the Customer as our client in publicity and promotional material (on and off-line) without the Client's prior consent, unless the Client sends notice in writing to LPG (by post to Leepeck Group, 17 Carlton Crescent, Southampton, Hampshire, SO15 2ES or by email to legal@leepeckgroup.co.uk) referencing this clause and requesting no publicity. Any request will only apply to publicity material to be prepared after such notice is given and LPG will be under no obligation to cease using material printed or prior to such notice.

## 19 ASSIGNMENT

The Customer may not assign or transfer any of its rights or obligations under this Agreement without the prior consent of LPG. LPG may assign or transfer any of its rights or obligations under this Agreement.

**20 ENTIRE AGREEMENT**

20.1 Except as provided in this clause 20, neither party shall have any remedy in respect of any untrue statement (whether written or oral) made to it on which it relied in entering into this Agreement ("Misrepresentation"), and neither party shall have any liability other than pursuant to the express terms of this Agreement. Nothing in this Agreement shall exclude or limit either party's liability for any Misrepresentation made knowing that it was untrue. Each party's liability for Misrepresentation as to a fundamental matter, including as to a matter fundamental to that party's ability to perform its obligations under this Agreement, shall be subject to the limit set out in clause 9.3.

20.2 This Agreement together with the Standard Terms of Business shall form the agreement between the parties. Where the terms of this Agreement are inconsistent with the Standard Terms of Business, the terms of this Agreement shall prevail.

**21 THIRD PARTY RIGHTS**

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.

**22 VARIATION AND WAIVER**

22.1 A variation of this Agreement shall be in writing and signed by or on behalf of both parties to this Agreement.

22.2 A waiver of any right under this Agreement is only effective if it is in writing, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

22.3 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

**23 SEVERANCE**

23.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

23.2 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.

**24 DISPUTE RESOLUTION**

24.1 If any claim or dispute arises under or in connection with this Agreement, the parties will attempt to settle such claim or dispute by negotiation.

24.2 If any claim or dispute cannot be settled by negotiation within 21 days after either party had made a written offer to the other party to negotiate a settlement to such claim or dispute, the parties shall, before resorting to court proceedings, attempt to resolve the claim or dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

24.3 If the parties have not settled any claim or dispute by mediation with 42 days from the initiation of the mediation, the dispute shall be referred to and finally resolved by the courts in accordance with Clause 25.2.

**25 GOVERNING LAW AND JURISDICTION**

25.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the laws of England.

25.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

This Agreement has been entered into on the date stated at the beginning of it.

SIGNED by .....

for and on behalf of Leepeck Group Limited)

..... Director

SIGNED by .....

for and on behalf of .....

..... Director

**SCHEDULE 1**

Project Plan



**SCHEDULE 2**

Software and Specification

Third Party (Software) Products



**SCHEDULE 3**

(Additional) Design and Development Services



**SCHEDULE 4**

Fees



Dated .....

LEEPECK GROUP LIMITED (1)

..... LIMITED (2)



**AGREEMENT FOR WEBSITE DESIGN AND  
DEVELOPMENT AND PROVISION OF RELATED SOFTWARE**

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