



TERMS AND CONDITIONS OF NORTHWAY COMMUNICATIONS SERVICES (UK) LIMITED

HOSTING AND SOFTWARE

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General Provisions

These conditions only apply to "Businesses" ie a person (which includes companies) acting for the purpose of their trade, business or profession. In these terms and conditions "you" and "your" refer to each customer and its agents, including each person listed in your account information as being associated with your account, and "we" "us" and "our" refer collectively to Northway Communications Services (UK) Limited or any group company.

These terms and conditions, our Acceptable Use Policy Service Level Agreement (in relation to Dedicated Hosting) and Refund Policy, and the order form comprise the agreement between you and us ("Contract"). This Contract explains our obligations to you and your obligations to us in relation to the service(s) you purchase.

1. Scope of Agreement and changes to the terms and conditions

- 1.1 Sections 1 to 13 of these terms and conditions apply to any of our services that you purchase ("general provisions").
- 1.2 In addition to the general provisions:
 - 1.2.1 Schedule A applies specifically to our Domain Name Registration services,
 - 1.2.2 Schedule B applies specifically to our Email services and web mail services,
 - 1.2.3 Schedule C applies specifically to our website hosting and server rental services and should be read in conjunction with our Dedicated Master Service Agreement,
 - 1.2.4 Schedule F applies specifically to Cubecart, software,
 - 1.2.5 Schedule H applies specifically to web design
- 1.3 It is important to note that if you purchase any of our services bundled together as a package, (for example you purchase a package that includes both a domain name and a webspace as opposed to purchasing these separately), termination of any part of the services may result in termination of all the services provided as part of that bundled package.
- 1.4 We may alter or amend the terms and conditions at any time for any valid reason upon giving you not less than twenty one (21) days notice in advance by post, email, and/or by posting the alteration on our website at www.northway.net, setting out the reasons for this alteration and the date it is to take effect. If we send the notice by post or email we will send it to the address last notified to us (see clause 2 for your obligation to keep your information up to date). Except where the change is as a result of legislative or regulatory requirements, if you do not wish to continue with the service as a result of the change to the terms and conditions, you may terminate the Contract without penalty by giving us written notice to reach us not less than seven (7) days before the date when the alteration to our terms and conditions is to take effect. If we do not receive such a notice from you prior to that date, and/or if you continue to use the service after sending us a notice, you will be deemed to have accepted the alteration.
- 1.5 We reserve the right to refuse orders for any reason. Where we do refuse an order, we will notify you that the order will not be processed. If the order has been processed and you have paid our charges before we notify you that your order

has been refused the charges you have paid will be refunded.

2. Provision of Information - your obligations

- 2.1 You agree to:
 - 2.1.1 provide certain true, current, complete and accurate information about you as required by the application process; and
 - 2.1.2 maintain and update the information you provided to us when purchasing our services as necessary to keep it current, complete and accurate.
- 2.2 We rely on this information to send you important information and notices regarding your account and our services, for example, information relating to the impending expiry and renewal date of a domain name or other service.
- 2.3 We will not be liable in respect of the non-renewal of a service or registration of a domain name if you do not receive our renewal notice having failed to notify us of new contact details.
- 2.4 You must ensure that all information submitted is correct as we may not be able to rectify errors.

3. The Services

- 3.1 We may need to change the service as a result of legislative, regulatory or other changes requiring us to do so. We will endeavour to provide you with not less than twenty one (21) days notice in advance of such alteration taking effect, but cannot always guarantee to do so.
- 3.2 We may also need to temporarily suspend the service without notice in order to repair, maintain or improve the service or our network, or in an emergency. If we need to do this, we will try to keep you informed and will try to keep interruptions to a minimum, but we cannot always guarantee to do so.
- 3.3 You must ensure that the service is used in accordance with these terms and conditions, our Acceptable Use Policy which can be found under LEGAL at www.northway.net and all applicable laws and regulations.
- 3.4 Unless otherwise specified the services do not include back up of your data. You are responsible for the back up of your own files and data, for your own internal network and all equipment that is connected to the Internet. In particular, it is your responsibility to ensure that your firewalls and anti-virus protection are kept up to date and are sufficient for your needs.
- 3.5 We may record calls or monitor them for training and security purposes.

4. Duration

- 4.1 Unless otherwise specified the Contract will start when we accept your order for service(s), which we will acknowledge in writing by sending you an email to the email address notified to us in your order and will continue in accordance with the terms applicable to a particular service and for the subscription period applicable to the service(s) in question
- 4.2 At least four (4) weeks prior to expiry of the applicable subscription period, we will remind you of the impending expiry of the services (by notice to the then current email and postal address specified by you on your account. The service will lapse unless we receive payment for the



Drive, Bredon, Tewkesbury,
Gloucestershire, GL20 7HH, by recorded
delivery, the Direct Debit mandate prior to
any Direct Debit being set up. On receipt of
the mandate we will proceed to set up the
Direct Debit and you will receive advance
notice of such Direct Debit.

- extended term of the subscription. We will not be liable in respect of the non-renewal of a service if, having sent you a renewal notice, we do not receive notice of renewal and the applicable payment, or if you fail to notify us of a change of contact details.
- 4.3 The Contract (and any subscription for service(s)) may be terminated early by you or us pursuant to clause 6 of these terms and conditions.
- 5. Charges and Payment Methods**
- 5.1 Charges are payable as specified in the specific terms and conditions relating to the service(s) in question and are due on an ongoing basis until this Contract is terminated.
- 5.2 The charges are inclusive of any third party disbursements that we may make on your behalf, for example registration fees payable to the applicable domain name registry.
- 5.3 VAT and other taxes and duties (where applicable) are payable in addition to the charges for the service(s).
- 5.4 If you do not make payment on the due date, we will:
- 5.4.1 be entitled to charge you interest on the amount owing (both before and after judgment) on the amount unpaid at the rate of 2% per annum above the base rate from time to time of Barclays Bank plc, such interest accruing on a daily basis from the date that payment falls due until the date that payment is made in full, and/or
- 5.4.2 suspend the service(s) until payment is made in full, and/or
- 5.4.3 terminate the Contract in whole or in part and cease providing the service(s).
- 5.5 If any payment paid to us by you in payment of the request and/or services, is not honoured for any reason:
- 5.5.1 registration and/or the service to which the payment relates will be suspended pending payment of the outstanding account in full together with a "failed payment" charge of £25 plus VAT.
- 5.5.2 you will not be able to register new domains or set up new services or transfer services away but services already paid for will continue to operate. The commencement date of the Contract is the time of the order. Monthly and auto-renewable services may be terminated by not less than ten (10) working days notice, via your online Account with us, expiring on your billing date for the product specified in your Account with us.
- 5.6 Where you have made duplicate or multiple payments in respect of a product or service and then require a duplicate payment or multiple payments to be refunded, Northway reserve the right to charge a £10.00 plus VAT admin fee prior to a refund being issued or deduct a £10.00 plus VAT admin fee from any refund issued. For the avoidance of doubt, the £10.00 plus VAT admin fee will be deducted from each individual payment that is being requested for refund.
- 5.7 Where a payment is made to us via bank transfer of any kind, all bank charges incurred will be your responsibility.
- 5.8 Where you have opted either online, or through one of our representatives, to pay for any services on a monthly basis by Direct Debit:
- 5.8.1 you agree that the first payment for the service will be taken by credit or debit card and all subsequent monthly payments will be taken via Direct Debit.
- 5.8.2 we will send you advance notice by email to the email address specified on your online account giving details of the service the Direct Debit relates to, the total amount, the frequency and date when the amount will be collected.
- 5.8.3 we confirm that the advance notice will be sent to you at least seven (7) days before the date when the Direct Debit will be collected.
- 5.8.4 an advance notice will only be sent when a Direct Debit is setup or modified.
- 5.8.5 in the event that more than one signatory is required for payment authorisation on any Bank or Building Society account, you confirm that you will print off and return to Accounts Dept, Northway Communications Services (UK) Limited, Unit 1 Station
- 5.8.6 we will not initiate any Direct Debit on your account unless authorisation has been received by you.
- 5.8.7 if the Direct Debit fails we will send an email to the email address listed on your online Account to advise you of the failure. You agree that under these circumstances any future payments will be taken from the credit or debit card listed on your Account until such time as the Direct Debit is authorised by the Bank or Building Society or until you contact us to make alternative payment arrangements.
- 5.8.8 in the event that you change Bank or Building Society we will be notified of such change by BACS and any existing Direct Debit for the service will be cancelled. An email will then be sent to you to request that you setup a new Direct Debit. You agree that under these circumstances you will contact us to make alternative payment arrangements.
- 5.8.9 in the event that you terminate the service, but we have not received any instructions from you with regard to cancellation of the Direct Debit associated with the service, you authorise us to take any outstanding payments for the service.
- 5.8.10 you can cancel any Direct Debit, at any time. If you wish to cancel any Direct Debit you can either:
1. write to your Bank or Building Society, sending a copy of the letter to us; or
 2. send an enquiry to the Accounts Department accounts@northway.net (10) working days prior to the next monthly renewal date for the service. We confirm that any cancellation for a Direct Debit via an enquiry will be completed within three (3) working days of the receipt of the enquiry.
- 5.9 Renewals**
- 5.9.1 Where you have opted for payment method 'auto-renewal' of the services due after 1 January 2008, we will advise you of the impending expiry of the services and give you notice that we will be automatically charging your Credit/Debit card. The notice will be sent to the then current email address specified by you on your Account.) In the event the payment fails, we will notify you via e-mail and it will be your responsibility to make alternative payment arrangements for your service renewal. We will not be liable in respect of the non-renewal of a service if, having sent you a renewal notice, we do not receive notice of renewal and the applicable payment, or if you fail to notify us of a change of contact details.
- 6. Termination and suspension**
- 6.1 The Contract may be terminated by you:
- 6.1.1 at the renewal date, giving not less than 3 months prior written notice.
- 6.1.2 with immediate effect on giving us written notice of termination, if we are in material breach of any obligation under the Contract and, where we can remedy that breach, have failed to do so within thirty (30) days of receiving notice from you specifying the breach and requiring its remedy; and/or
- 6.1.3 with immediate effect on giving us written notice of termination, if we have an order made or resolution passed to be wound up (otherwise than for the purpose of a scheme for solvent amalgamation or reconstruction); and/or



- 6.1.4 on a change to the terms and conditions, by serving us notice in accordance with clause 1d.
- 6.2 We may terminate the Contract:
- 6.2.1 with immediate effect on giving you written notice of termination, if you are in material breach of any obligation under the Contract and, except in relation to payment, where that breach can be remedied by you, have failed to do so within thirty (30) days of receiving notice from us specifying the breach and requiring remedy of that breach; and/or
- 6.2.2 with immediate effect on giving you written notice of termination of breach any provision of our Acceptable Use Policy (www.northway.net/legal.html)
- 6.2.3 with immediate effect on giving you written notice of termination, if you provide any false, inaccurate, incomplete or misleading information, or if you fail to correct material errors or omissions relating to any information supplied by you, resulting in that information becoming false, inaccurate, incomplete or misleading; and/or
- 6.2.4 with immediate effect on us giving you written notice of termination, if you become insolvent, have a receiver appointed over the whole or any part of your assets, enter into any composition with creditors, or have an order made or resolution passed to be wound up (otherwise than for the purposes of a scheme for solvent amalgamation or reconstruction) or, where you are an individual or partnership, if you become bankrupt, make a voluntary arrangement with your creditors or have a receiver or administrator appointed; and/or
- 6.2.5 with immediate effect on giving you notice if we lose any licence or permission necessary to carry out the service(s). In such a case, however, we will be entitled to terminate the Contract in part if any other service(s) are not affected by the loss of such licence or permission.
- 6.3 You acknowledge that termination of the Contract for any reason will result in us ceasing to provide all the service(s), with all the consequences that flow from such cessation, including (but not limited to), deletion of hosting account(s) and mailboxes.
- 6.4 If you terminate the Contract during the initial subscription period as specified in the specific terms and conditions applicable to the service, or the acknowledgement of order, as the case may be, we may be entitled to charge you a cancellation fee equivalent to the subscription fee for the initial period, less any sums paid by you for that initial period. Please refer to the specific terms and conditions for more information on this.
- 6.5 We may, at our sole discretion and without prejudice to any rights we may have to terminate the Contract, suspend the provision of the service(s) immediately on sending you written notice if:
- 6.5.1 we are entitled to terminate the Contract pursuant to 2.5, or
- 6.5.2 we need to comply with an order, instruction or request of government, an emergency services organisation or other competent administrative or regulatory authority which affects our ability to provide the service, or
- 6.5.3 we reasonably believe you will fail to pay any amount due under the Contract.
7. **Hardware and Software**
- 7.1 Where the service(s) comprise the supply of hardware or software, use of this hardware and software is licensed to you and unless otherwise specified in the specific terms relating to the applicable service, title to this does not pass to you at any time. Title remains with us and/or our suppliers.
- 7.2 On termination of the Contract for whatever reason you will at your cost return the hardware to the supplier via our returns procedure within seven days. If you fail to return the hardware within seven days you shall pay us the full replacement cost of the hardware which is not returned which may be deducted by us from any refund due to you.
- 7.3 You undertake to use the hardware and software in accordance with our instructions and with their respective

licences. You undertake not to modify the hardware or software in any way.

8. **Liability**

- 8.1 We exclude all liability of any kind in respect of:
- 8.1.1 information supplied by you, third party information on our website, or any other material on the Internet which can be accessed via our website or using the service(s), and we are not responsible in any way for any goods (including software) or services provided by third parties advertised, sold or otherwise made available by means of the service(s) or on the Internet;
- 8.1.2 the accuracy, completeness or suitability for any purpose of any content supplied by us or content providers from time to time and which is received via our website or via the Internet, email or service(s). For the purposes of this clause, "content" shall mean data, information, software, photographs, video graphics, music, sound and other material appearing on or available through the service(s);
- 8.1.3 any material you publish or otherwise display on your website;
- 8.1.4 breaches of security or unauthorised use of any domain name(s) registered through us, websites hosted through us or servers rented from us arising from "hacking" or otherwise. It is your responsibility to ensure that your website is secure from unauthorised access.
- 8.2 We will not be liable for any loss or damage, whether direct or indirect, which you may suffer as a result of service or systems failure (whether caused by systems or services under our control or otherwise) including but not limited to domain name system failure, server failure, access delays or interruptions, data non-delivery or mis-delivery, or delays in the provision of services.
- 8.3 We will not be liable for the loss of any emails sent to mailboxes of any configuration or sent from email accounts related to services provided by us. We are not responsible for any email stored in mailboxes provided by us.
- 8.4 We will undertake regular maintenance updates to our systems and services, and will endeavour to ensure that our website and systems are free from viruses and other disabling devices. However we will not be liable for any damages or losses whether direct or indirect that you may suffer as a result of any virus, Trojan or other disabling device that affects the service(s) or systems under our control or otherwise. It is your responsibility to ensure that your network and systems are adequately protected against any viruses, Trojan or other disabling devices.
- 8.5 Insofar as any part of the service(s) depends on or is supplied by other telecommunications operators, we are not responsible for their reliability or quality.
- 8.6 We will not be liable to you either in Contract, tort (including negligence) or otherwise for direct or indirect loss of profits, loss of use of profits, goodwill, actual or anticipated savings, loss of production and operation time, nor for any indirect or consequential loss or damage, or for any destruction or loss of or corruption to data. It is your responsibility to ensure that all data stored on servers is backed up as necessary for you.
- 8.7 Our liability to you in contract, tort (including negligence) or otherwise in relation to the Contract and the service(s) is limited to £5,000 for one incident or series of incidents.
- 8.8 Except as expressly provided in the Contract, all warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9. **Indemnity**

- 9.1 You must indemnify us and keep us indemnified against all and any losses, claims, damages, costs, charges, expenses and other liabilities which we may sustain or incur arising out of or in connection with:
- 9.1.1 any breach by you of any provision of the Acceptable Use Policy (www.northway.net/legals) and/or
- 9.1.2 any negligence, recklessness or unlawful misconduct by you, your agents or employees in the performance of your obligations under the Contract.

10. **Complaints**



- 10.1 If you have a complaint about any aspect of the service(s) please see our Code of Practice (www.northway.net/legal.html) for more information on our complaints procedure
- 11. Personal Information**
- 11.1 By registering for the service(s) you consent to us using and/or disclosing any personal information as follows:
- 11.1.1 for processing your application, which may involve a credit check which, in the case of an individual, may record that a credit check has been made and disclosing your personal and account information to a bank for the purposes of setting up a direct debit arrangement; and
- 11.1.2 if necessary, providing or arranging for third parties to provide customer care facilities and bill you for the service, which may involve disclosing your personal information to third parties solely for those purposes.
- 11.1.3 we may retain information that you provide and from time to time may use this information to offer you other services that we feel may be of interest to you both from us and other companies. We may contact you by post or e-mail. If you do not wish to receive this information please let us know either by e-mail using the unsubscribe link given on our mailings or by telephoning us on 0845 363 3630 and we will amend our records.
- 12. Notices**
- 12.1 All notices which are required to be given under the Contract must be sent as follows:
- 12.1.1 To us by writing to us by first class registered post at Unit 1, station Drive, Bredon, Gloucestershire, GL20 7HH.
- 12.1.2 To you by email transmission or first or second class post to the email or postal address registered on the Contact Details page of your online Control Panel on the date when notice is sent (see clause 2 for your obligation to keep your information up to date)
- 12.1.3 Any notice delivered to you shall be deemed to have been received by you:
1. by email transmission on the date notice is sent;
 2. by first or second class post three working days after the date notice is sent
- 12.1.4 Any notice delivered to us by logging an enquiry through www.northway.net and/or by first class registered post shall only be deemed to have been received and accepted by us on acknowledgment to you by email (this does not include any auto responder sent by us) or by signing for the registered post.
- 13. General**
- 13.1 You may not transfer or sub-license the Contract or the service(s).
- 13.2 We may transfer the Contract to any group or associated company and to any business taking over the supply of the service(s) or any part of the service. We may also sub-contract the service(s) or any part of the service(s).
- 13.3 If any part of the Contract between us is found to be illegal or unenforceable, this will not affect the validity and enforceability of the remainder of the Contract.
- 13.4 Any delay or failure by either of us in enforcing any right under the Contract is not a waiver of that right and will not prevent that right or any other right or remedy from being exercised or enforced.
- 13.5 This Contract constitutes the entire agreement between us relating to the provision of the service(s) and supersedes any previous agreements relating to the service(s).
- 13.6 In the Contract we are independent contractors and nothing in the Contract will give rise to any joint venture or partnership between us.
- 13.7 Nothing in this Contract confers or is intended to confer any rights on any third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

- 13.8 The provision of the service(s) and the application of these terms and conditions and interpretation of the Contract are governed by English law and subject to the jurisdiction of the English courts. Where you are a small business customer with five (5) or less employees, you may also use the dispute resolution forum specified in our Code of Practice

13.8.1 Neither of us shall be liable for any breach of our obligations hereunder where the breach results from causes beyond our control including, without limitation, restrictions of a legal or regulatory nature ("force majeure") and we have acted reasonably and prudently to prevent and to minimise the effect of such causes. For the avoidance of doubt:

1. where you suffer a force majeure event, you shall still be liable to pay any charges or fees which become due and payable for services supplied by us during the event of force majeure.
2. where we suffer the event of force majeure, you shall not be liable to pay for services not delivered by us

SCHEDULE A

Terms and conditions relating to our Domain Name Registration Service

1. Orders

- 1.1 Your order must be submitted to us either using the on-line order form or through one of our representatives and must indicate the domain names that are to be registered, full details of the registered proprietor, and, where the domain name ends in .ld.uk or .plc.uk, inform us of a valid company registration number for the proposed registered owner of the domain name.
- 1.2 You must ensure that all information submitted is correct as we may not be able to rectify errors.
- 1.3 You are responsible for ensuring that you have complied with the registration criteria and obtained all consents and authorisations necessary in respect of the registration or transfer of the domain names.
- 1.4 Individuals who do not wish their address details to be published on the Nominet WHOIS database (where applicable) must inform us of this at the time of ordering the domain name. Businesses cannot opt out of the publication of their details but may offer an alternate address such as a P.O. Box.
- 1.5 We reserve the right to refuse orders for any reason. Where we do refuse an order, we will notify you that the order will not be processed. If the order has been processed and you have paid our charges they will be refunded.
- 1.6 We will endeavour to meet any dates agreed for the obtaining of the names and domains specified by you, but this date is an estimate only and we will not be liable for any delay.
- 1.7 If we accept your order, the processing of your request will start immediately.

2. Services

- 2.1 We provide domain name services on an "as available" basis. Our acceptance of your application to register a domain name is not an acknowledgement by us that the domain name is available. The success or failure of domain name registration depends on many factors outside our control and we cannot therefore guarantee that your application will be successful. Your application to register the domain name is therefore subject to the successful registration of the domain name at the applicable domain name registry/registrars. A successful registration is shown by the domain name being displayed on the WHOIS directory of the registry/registrars as being registered to you.
- 2.2 Subject to paragraph 4 (c) below if a domain name is not successfully registered with the registry/registrars or if we do not accept your order for whatever reason, we will refund the registration fee you paid to us. However, we will not be liable to you for any loss or damage arising or resulting from any inability to register the domain name or from us not accepting your order and we will not be responsible for any costs incurred or other steps taken by you in anticipation of the registration or transfer of a domain name prior to receipt of official confirmation of such registration or transfer. **Neither will we be liable to refund the registration fees if, for any reason after**



registration, you have to relinquish the domain name or if you cancel your order.

- 2.3 You should note that any domain name registered, whether or not by us, may subsequently be challenged and/or cancelled by parties other than us.
- 2.4 You agree that we will be registered as the Administrative Contact for all domain names registered for you or held on your behalf.
- 2.5 You agree that we may, at any time and without notice, change the domain name Registrar or other supplier with which/whom we manage your domain name(s).

To do so may require us to perform a "Registrar Transfer". In which case, you authorise us to act on your behalf in this regard and transfer the domain name(s) to our chosen supplier. You agree that any transfer authorisation emails will be dealt with by us as the authorised Administrative Contact for the domain name(s).

We will endeavour to perform such transfers in a transparent manner, with no service disruption or the loss of any domain management facilities previously available to you.

You acknowledge that by us performing a Registrar Transfer, the domain name(s) will be blocked from transferring to any other domain name registrar for a period of 60 days from the date the transfer is completed.

3. Charges and Payment

- 3.1 We require payment in advance for the registration and renewal of all domain names.
- 3.2 Our charges for registration and renewal, which include third party disbursements (for example the registry/registrar's fees), can be viewed at www.northway.net/pricelist/ or by contacting us on 01684 878325 .
- 3.3 The disbursements and our charges represent the initial costs for the registration of a domain name and you acknowledge that continued use of a domain name may expose you to additional charges payable to the local domain name registry/registrar, for example on renewal. You are liable for any such charges. The charges and disbursements charged to you will remain fixed for the initial term of the Contract (such as twelve (12) months or twenty four (24) months as applicable or notified to you). You will be given at least 4 weeks' notice of changes for the renewal term.
- 3.4 Our charges for transferring a domain name are in accordance with paragraph 7 of this Schedule A.
- 3.5 No refund will be given if:
 1. termination takes place within the existing registration period of the domain name.
 2. the domain name was renewed through the renewal template of the registry/registrar.
 3. You acknowledge that if you upgrade your .com, .net, .org, .biz, .info or .mobi domain name(s) to include the Private Registration service the fee is non-refundable as once an upgrade has been processed we will not receive any refund from the Registry/Registrar should the Private Registration service be cancelled by you.
 4. You acknowledge that the Private Registration service can only be purchased for whole year periods and will run from the point at which you upgrade, until the domain(s) current renewal date.

4. Cancellation

- 4.1 You are entitled to cancel an order for a domain name subject to the following terms:
 1. if we have not started processing the order, it will be cancelled subject to your paying a cancellation charge of £10 plus VAT;
 2. if we have started processing the order then (irrespective of whether or not the cancellation request is received within four (4) hours) it will be cancelled subject to your paying our full charges (including the Local Administration Costs, but only if these have been incurred) and the cancellation fee referred to in clause 4. above.
- 4.2 Refund requests following cancellation are generally dealt with and processed weekly. Where you have paid us by credit/debit card for the purchase of the service, we will

endeavour to issue the refund to the credit/debit card used. In cases where this is not possible, a cheque will be raised to the company name in the first instance on your account. If no company name is stored, the cheque will be made payable to the individual's name held on the account.

- 4.3 Registration criteria for each domain name are displayed on the domain name search results page, www.names.co.uk/order/domains/index. If you continue to process your order after seeing the specific requirements but do not meet them you will only be entitled to a refund of 70% of the transaction cost. We will retain the balance as a contribution towards the administrative and other costs we have incurred.
- 4.4 Where you have chosen not to renew a domain name with an international suffix, the domain registry/registrar may require you to complete and submit a domain name cancellation form before the domain name can be cancelled in its entirety.
- 4.5 Under these circumstances we will forward to you any form(s) for signature and you must return it/them to us. You accept that it shall be your responsibility to ensure that we are in receipt of the completed form.
- 4.6 Failure to complete and return the cancellation form to us will result in the international domain name being renewed by the registry/registrar at cost to us. This cost, and any additional costs that the registry/registrar may impose on us, will be invoiced to you and should be paid immediately on receipt of such invoice. You accept that we reserve the right to engage a third party debt collection agency in order to obtain any outstanding monies.
- 4.7 You accept that the international domain name will not be cancelled, even if you have given us written confirmation that you do not wish to renew the international domain name, until such time as the registry/registrar are in receipt of your completed form and that you will be responsible for all ongoing costs in relation to the international domain name until such time as the registry/registrar have acknowledged to us that your international domain name has been cancelled in its entirety.

5. Domain name registry/registrar and indemnity

- 5.1 You agree and acknowledge that registration and use of the domain name is subject to the acceptable use policies, rules and/or other terms and conditions of the registry/registrar. By submitting the order form to us, you agree to be bound by any such policies, rules and/or other terms and conditions and to fully and effectively indemnify us in respect of all losses, costs, expenses or liability suffered or incurred by us as a result of or arising out of any breach of these policies, rules and/or other terms and conditions. It is your responsibility to familiarise yourself with the policies, rules and other terms and conditions of the registry/registrar. Purchase of a .uk domain name indicates your acceptance of the terms and conditions of the registry, Nominet UK, which can be found at <http://www.nominet.org.uk/nominet-terms>.

6. Duration and Renewal

- 6.1 A domain name, once registered, will fall due for renewal at the expiration of the registration period. We will notify you of the registration period applicable to your chosen domain names. It is your responsibility to monitor the renewal date of your domain name and ensure that we receive payment by the date it is due. You may advise us through one of our representatives or online that you do not wish to be reminded of renewal dates in which case we shall have no liability to you if you fail to renew.
- 6.2 We require payment for the renewal of the domain names prior to the renewal date for the ongoing registration of those domain names. We reserve the right not to make payment to the registry/registrar unless payment has been made by you to us for this renewal.
- 6.3 Unless you have notified us that you do not wish us to send you reminders of renewal dates, our sole obligation in relation to the renewal of domain names is to issue one reminder to you at your last notified email address and postal address about the renewal date of the relevant domain name. This obligation will lapse if your registration of the domain name lapses or terminates for any reason. We will not be liable in respect of the non-renewal of a domain name if, having sent you a renewal notice, we do not receive notice of renewal and the applicable payment, or if you fail to notify us of a change of address.
- 6.4 The Contract is subject to the provisions relating to early termination in the general terms and conditions.

7. Transfer

- 7.1 Any request to transfer a domain name from us to a new provider must be done through your on-line control panel, a support ticket through www.northway.net, by email or via



one of our representatives. We may advise you to contact us if your request for a transfer must be accompanied by written confirmation from you that you consent to the transfer. This confirmation must also include any additional information which we reasonably request.

- 7.2 Where the transfer of any domain name has to be effected by your new provider, then, subject to your compliance with the terms of the Contract, we will co-operate with the new provider to allow the transfer to take place.
- 7.3 We will only agree to the transfer to another service provider where you do not owe us any sums in respect of our domain name services, where you pay any applicable transfer fee to us and where you have provided us with all the necessary information to effect the transfer. You must ensure that all information provided is correct as we may not be able to rectify errors.
- 7.4 On receipt of a transfer request, we will use our reasonable endeavours to process the transfer request, but will not be responsible for any delay in effecting such transfer due to acts or omissions of your current provider or new provider (as applicable) or the registry/registrar.
- 7.5 If you require us to effect a change of registrant, we will advise you of the procedure and cost.
- 7.6 Where a .uk domain is transferred to us, it is your responsibility to ensure you have an account with us and you have followed our .uk transfer in process in order for us to be able to accept and complete the domain transfer on your behalf. We cannot be held responsible for any domain name(s) that is/are rejected when you have not completed the .uk transfer in process through your account with us. If at any time the domain name needs to be removed from the account created and placed in another account with us (ie a reseller's account) then we will require authorisation from the legal registrant for the domain name for this to occur.
- 7.7 When requesting the transfer of a gTLD domain name to our management, you acknowledge that:
1. The domain name has been unlocked (if applicable) and the current provider is aware of, and willing to approve, the outbound transfer.
 2. Submission of a domain name transfer request to us does not guarantee that the transfer will be successful.
 3. Until such time as you receive a transfer completion notice issued by us, management of the domain name(s) being transferred remains your sole responsibility. This includes meeting renewal deadlines and paying any amounts owed to the existing provider.
 4. The transfer fee is valid for 60 days. If, after 60 days, we have been unable to transfer the domain name, the transfer fee will become payable again if you wish the transfer to continue.
8. **Indemnity**
- 8.1 You will indemnify us against all costs, claims, damages and losses incurred by us as a result of:
1. any claims that any of the domain names infringe the intellectual property rights of any third party;
 2. any errors in any information provided by you in relation to any domain name transfers or registrations; and
 3. any act or omission by us in reliance on any information provided by you.
9. **Disputes**
- 9.1 If we become aware of any dispute with any other person or business or organisation regarding the domain names or any other of your domain names, we may, at our sole discretion, and without notice or liability to you, cease any further use or service of such domain names including, without limitation, deleting or suspending them from our computer systems, and/or making appropriate representations or providing information to any relevant authority or interested party.
10. **Interpretation**
- 10.1 If there is any conflict between the Contract and the terms and conditions of the registry/registrar the terms and conditions of the registry/registrar will take precedence.

SCHEDULE B

Terms and conditions for the provision of Email Services and Web mail Services

1. **Orders**
- 1.1 Your order must be submitted to us using either the on-line order form or through one of our representatives. The services must be used in respect of a registered domain name.
 - 1.2 If we accept your order, the processing of your request will start immediately.
2. **Services and Charges**
- 2.1 Details of our services and our price list will be found on our web site at www.northway.net/pricelist
3. **Duration**
- 3.1 The Contract for email and web mail services will be for a period which depends on the package chosen ("Minimum Term") starting at the time the order is accepted after which it will expire unless it is renewed for a subsequent period. This is subject to the provisions for early termination set out in the general terms and conditions.
4. **Consequences of termination**
- 4.1 On termination for any reason, we will cease providing the services and your mailboxes will be deleted.
 - 4.2 If the termination is during the Minimum Term you will be liable to pay us the charges that would have arisen from the date of termination until the expiry of the Minimum Term.
 - 4.3 You acknowledge that with regard to the purchase of email services and webmail services, whether purchased annually or multi-year from us, eighty per cent (80%) of our charges relate to administration charges and are non-refundable. Twenty per cent (20%) of our charges relate to the ongoing cost for the email services and web mail services. On the cancellation of annual or multi-year email services or webmail services after the end of the Minimum Term the refund will be calculated on a pro rata basis of the twenty per cent (20%). Renewals of any annual or multi-year email services and web mail services will be on the same eighty per cent (80%) twenty per cent (20%) basis.
 - 4.4 If you have a monthly or quarterly package you are not eligible for a refund.
5. **Mailbox**
- 5.1 Each mailbox has a storage quota. This may be by reference to the number of emails held, the size of attachments, or other methods we may specify. This is in place to protect your account and other accounts from potentially large volumes of email sent to a single address that could materially affect the email system server. Additional storage can be purchased. It is your responsibility to ensure that your mailbox does not reach its allocated level. We will not be liable for any email lost due to full mailboxes.
 - 5.2 We may occasionally need to change these limits either for operational reasons, or because we reasonably believe you have not been using the services in accordance with our Acceptable Use Policy (www.northway/legal.html). If we do so, we will endeavour to give you twenty one (21) days advance notice of the new limits by email and after that notice expires we may refuse to accept material and/or remove materials which exceed the relevant limits. Your e-mails will be stored on our clustered mail services until they are removed from our server.
 - 5.3 It is your responsibility to keep your password confidential and to change the password on a regular basis. We will not be liable for any data losses or security issues due to stolen or insecure passwords.
6. **Service availability**
- 6.1 We monitor the mail platform as a whole but do not monitor individual mailboxes. The server uses SMTP, a "store and forward" email protocol, to receive incoming and deliver outbound messages. By default, the mail platform attempts to deliver messages on a regular basis. If delivery is not achieved within twelve (12) hours, a delay notification is emailed to the sender. If delivery is not achieved within four (4) days, the message is returned to the sender.
7. **Storage Capacity**
- 7.1 Each account is allotted an aggregated storage capacity initially equal to the total storage capacity of all the mailboxes of that account.



8. Maintenance

- 8.1 In order to ensure good performance of the servers, we need to perform routine maintenance. This may mean that we need to take our servers off-line. Where possible, we perform such maintenance during off-peak hours. We will try to give you advance notice of any maintenance which requires the servers to be taken off-line by sending you an email to your notified email address on your Account or by posting an announcement on our service status page on our website.

9. Security

- 9.1 We try to ensure mailbox security and integrity of data at all times. However, despite our efforts, problems may occasionally arise. Where a problem does arise with a specific mailbox, it is your responsibility to inform us of this and we will use all reasonable efforts to resolve the problem. However, we do not guarantee that we can restore any lost or corrupted data and we will have no liability for the loss or corruption of any data. It is your responsibility to ensure that you back up your data as necessary for you.
- 9.2 We provide anti-virus and anti-spam services for incoming e-mail. This service can be enabled and configured via the online control panel. While we do our best to remove all viruses and spam, we cannot guarantee that we will catch them all nor that no virus will reach your computer. We also cannot guarantee that non-spam messages will never be marked as spam.

10. Ownership of data and indemnity

- 10.1 All data created or stored by you within our applications and servers are your property.
- 10.2 We will allow access to such data only by our authorised personnel.
- 10.3 You will indemnify us and keep us indemnified against any claim, loss or damage in respect of any web server content, email content or any other data contained within your server space or within applications on our servers.

11. Use of Email account

- 11.1 If we identify a mailbox or domain name that is transmitting illegal, offensive, abusive, derogatory, defamatory, obscene or infected content, or for the purposes of sending bulk or unsolicited emails, or being used contrary to our Acceptable Use Policy (www.northway/legal.html), or otherwise causing problems, we will either remove the offending mailboxes or change their settings to resolve the issue. In certain cases we will, at our discretion, disable email or suspend all services to the domain as appropriate.

SCHEDULE C

Terms and conditions for the provision of website hosting and server rental services

Part 1 Terms applicable to all parts of this schedule

1. Services

- 1.1 A description of the services will be included on our website in the service description section of the order form.
- 1.2 You acknowledge that unless otherwise agreed in writing with us, any delivery date we give to you is a guideline only and we do not guarantee that it will be met. Also, you acknowledge that any delays by third parties in providing Internet connectivity or transferring domain names are outside our reasonable control and therefore we will not be liable for any such delay.
- 1.3 If you reasonably believe that the service delivered to you on the actual delivery date does not meet the specifications, you must notify us of this within ten (10) Working Days of the delivery and we will then use all reasonable endeavours to resolve the issue within ten (10) Working Days. "Working Day" shall mean a day falling on a Monday to Friday which is not a UK bank or public holiday.
- 1.4 If you do not notify us of any failure within ten (10) Working Days of delivery or, where we have carried out remedial work pursuant to paragraph 1c of this Schedule C above, within ten (10) Working Days of us completing that remedial work (as notified to you by us), you will be deemed to have accepted the service as delivered.
- 1.5 We reserve the right to amend the service, hardware or software supplied, at any time, with not less than seven (7) days' notice to you, provided that this amendment does not materially detrimentally affect the service.
- 1.6 We may occasionally impose limits on your storage space or data activity if we impose any limits, we will give you

twenty four (24) hours advance notice of any limits by email.

2. Duration

- 2.1 The commencement date of the Contract is the time of the order. Monthly and auto-renewable services may be terminated by not less than ten (10) working days notice, via your online Account with us, expiring on your billing date for the product specified in your Account with us.

3. Consequences of termination

- 3.1 We shall be entitled to payment of any charges set out in paragraph 4 of this Schedule C.

4. Charges

- 4.1 Details of our charges can be found on your order form.
- 4.2 You are responsible for ensuring that your bandwidth does not exceed the allowances set as part of your package/service.
- 4.3 If your bandwidth either exceeds the allowance set as part of your package/service or reaches the point where it has an adverse effect on other customers we reserve the right to:
1. disable your site, without prior notice, until you can reduce your bandwidth usage; or
 2. charge you for excess bandwidth usage, over and above your package allowance, as published by us from time to time.
- 4.4 Termination charges for virtual hosting will be found in paragraph 11(a) of this Schedule
- 4.5 Termination charges for server rental:
1. the Minimum Term for each agreement is twelve (12) months from the date the services are accepted or deemed to be accepted by you;
 2. if you terminate the agreement during the Minimum Term you remain liable to pay for the services for the remainder of the Minimum Period;
 3. after the end of the Minimum Term you must give at least one month's notice to terminate the agreement.
- 4.6 You agree that the level of data activity permitted in the use of the servers provided under the server rental services or the website hosting services are as specified in the service level agreement. Data activity over and above that permitted will be charged at the rates specified on the service order form.

5. Maintenance

- 5.1 In order to ensure good performance of the servers, we need to perform routine maintenance. This may mean that we need to take our servers off-line. Where possible, we perform such maintenance during off-peak hours. We will try to give you advance notice of any maintenance which requires the servers to be taken off-line by sending you an email to your notified email address and we will try to keep interruption to a minimum.
- 5.2 We also may need to, and reserve the right to, suspend the service if you exceed your maximum bandwidth transfer quota as notified to you.

6. Your obligations

- 6.1 You must notify us if you become aware of any unauthorised use of all or any part of the website hosting and server rental services, software or hardware.
- 6.2 You will take all reasonable precautions against viruses and other disabling devices.
- 6.3 You will maintain and keep confidential all user names and passwords and not disclose them to any unauthorised party. If you have any reason to believe that any such confidential information has become known to an unauthorised party, you should inform us immediately.
- 6.4 You undertake to allow us access at all reasonable times to perform maintenance or other actions necessary to ensure continued access to the Internet.
- 6.5 You will be liable for all activities or charges and associated costs resulting from use of the service whether or not authorised by you and you acknowledge that we will not be liable for any loss of data or confidential information or other damage arising from such use.
- 6.6 You represent that you have sufficient technical knowledge to enable you to make use of the service.



- 6.7 You shall ensure that you have obtained all necessary consents for the use of all such content available from your server.

7. Liability

- 7.1 If you notify us of any failure or defect in any server, our sole obligation will be to notify the maintainer of the server of the failure or fault and, if we have an alternative server for use, to make the same available to you.
- 7.2 Our responsibility and liability in respect of the availability of the website is limited as specified in our service level agreement with you. Our obligation is to act as host only.
- 7.3 You acknowledge that you have sole responsibility and liability for the design and maintenance of the website and for ensuring that it does not infringe the intellectual property or other rights of any third party and is not illegal.
- 7.4 We do not guarantee the proper delivery of any email message or other data once it has left the confines of our network, and similarly we do not guarantee that data traffic will be delivered or that its contents will be held secure once it passes out of our control.
- 7.5 Where we supply third party equipment or software, our responsibilities are limited to the level of warranty provided by the third party.

Part 2 - Virtual Hosting

8. Services

1. We aim to set up Virtual Hosting within 1 day of receiving your order and will send you an e-mail to advise you of your user name, password and other information.

9. Duration

1. The commencement date of the Contract is the time of the order. Monthly services may be terminated by not less than ninety (90) days notice expiring on your billing date for the product specified in your Account with us.

10. Your obligation

1. You are responsible for all backups.

11. Charges

1. You acknowledge that with regard to the purchase of hosting services, whether purchased annually or multi-year from us, eighty per cent (80%) of our charges relate to administration charges and are non-refundable. Twenty per cent (20%) of our charges relate to the ongoing cost for the hosting service. On cancellation of annual or multi-year hosting services after the end of the Minimum Term the refund will be calculated on a pro rata basis of the twenty per cent (20%). Renewals of any annual or multi-year hosting services will be on the same eighty per cent (80%) twenty per cent (20%) basis.
2. You acknowledge that in regard to the cancellation of hosting purchased on a monthly basis, from us, no refund will be payable on a pro-rata basis or otherwise.

Part 3 - Dedicated Hosting

12. Supply of hardware and software

1. We will use our reasonable endeavours to ensure that any supply installation and connection by us is done on or about the estimated date that we give to you which will be subject to our obtaining the necessary hardware.
2. If you require a managed server you must specify this in your order.

13. Duration

1. The commencement date of the Contract is the date we receive your signed order.

14. Your obligations

1. On unmanaged servers you are responsible for all software.
2. We will provide you with an IP address and appropriate settings as agreed between us and it is your responsibility to ensure that you only configure that IP address and have the necessary technical expertise to do so.
3. Except where you have a managed server package, you are responsible for all backups.

SCHEDULE D

Terms and conditions for use of Cubecart software

» CubeCart v4 Software License Agreement

YOU MUST READ, UNDERSTAND AND AGREE TO THIS LICENSE BEFORE OBTAINING THE CURRENT VERSION OF CUBECART. THIS INFORMATION EXPLAINS THE EXTENT TO THE USAGE PERMITTED AND/OR RESTRICTIONS FOR THE USAGE OF CUBECART.

Licensor: Devellion Limited (CubeCart is a registered trade mark of Devellion Ltd)

Product: CubeCart eCommerce Solution

Licensee: The customer/individual obtaining CubeCart.

License Type: This is a custom license. CubeCart is NOT open source software.

Live Store: A single installation of CubeCart which is (or is available for) trading financially.

Development Store: A single installation of CubeCart which is NOT available for trading financially.

PRICES

Restricted User License: POA

Restricted Corporate User License: POA

Full License to remove "Powered by CubeCart" notice text per domain: POA

THE LICENSE

Devellion Limited grants you a non-exclusive license to use the software if you follow all restrictions in all sections of this agreement.

CUBECART IS NOT AN OPEN SOURCE SOFTWARE PRODUCT. YOU MUST FOLLOW THE LIMITATIONS IN THIS SOFTWARE AGREEMENT. WE OFFER SPECIFIC PERMISSION TO CUSTOMISE THE CODE FOR YOUR OWN NEEDS LATER IN THIS AGREEMENT.

Technical support and related services are available to those following this agreement with no charge at the community forums at <http://forums.cubecart.com>. Devellion Limited reserves the right to limit or refuse technical support and related services in any form for any reason.

RESTRICTIONS OF USE

You are permitted to:

- use the software on one IP address and server domain per software license key.
- copy the software for archival purposes, provided any copy must contain all of the original software's proprietary notices
- customize the software's design and operation to suit the internal needs of your website. You may not distribute these modifications/changes with out prior consent from the Licensor.
- create applications which interface with the operation of the software provided said application is an original work.
- use CubeCart for the sale of any legal products or services (e.g. adult material) conforming to local laws/regulations.

You are NOT permitted to:

- permit other individuals to use the software except under the terms listed herein
- reverse engineer, disassemble, or create derivative works based on the software for distribution or usage outside your website excluding those applications described above.
- rebrand and/or sell CubeCart as your own ecommerce solution.
- host the CubeCart download software packages or redistribute them without written consent from Devellion Limited.
- use the software in such a way as to condone or encourage terrorism, promote or provide pirated software, or any other form of illegal or damaging activity.
- modify and/or remove any copyright notices or labels on the software on each page and in the header/footer and output html of each source file. This includes "(Powered by CubeCart)" in the browser title and "Powered by CubeCart" page footer. This may only be done if a copyright removal key has been purchased.
- distribute or modify proprietary graphics, HTML, or CSS packaged with the software for use in other software applications or websites without written permission from Devellion Limited

LIMITED LIABILITY

The software is provided on an "AS IS" basis, without warranty of any kind, including without limitation the warranties of merchantability, fitness for a particular purpose and non-infringement. The entire risk as to the quality and performance of the software is borne by the Licensee.

Should the software prove defective, the Licensee and not Licensor assume the entire cost of any service and repair. In addition, the security mechanisms implemented by Devellion Limited software have inherent limitations, and you must determine that the software sufficiently meets your requirements. This disclaimer of warranty constitutes an essential part of the agreement.



OWNERSHIP

Title, ownership rights, and intellectual property rights in the software shall remain with the Licensor. Copyright laws and treaties of England and Wales protect this software and any issues that may arise over this will be dealt with in the courts of England and Wales. Title and related rights in the content accessed through the software is the property of the applicable content owner and may be protected by applicable law. This license gives you no rights to such content.

TERMINATION

This agreement will terminate automatically if you fail to comply with the limitations described herein. On termination, you must destroy all copies of the software within 48 hours. The Licensee agrees that the sales staff of the Licensor can disable a software license key without notice. A reason will be given to the Licensee on request (e.g. The payment for the software license was reversed as it was deemed fraudulent by the vendors bank). If this is the case the administration control panel of your store may become inaccessible soon after.

MISCELLANEOUS

The Licensor reserves the right to change the terms of this agreement at any time however those changes are not retroactive to past releases. Changes to the agreement will be announced via the discussion board at Devellion Ltd. Failure to receive notification of a change does not make those changes invalid. A current copy of this agreement will be available at <http://www.cubecart.com/site/faq/license.php>. All prices are subject to change without notice.

Technical support will NOT be provided for third-party modifications to the software including modifications to code to any license holder. If the software is modified using a third-party modification instruction or otherwise, technical support may be refused to any license holder.

PROPRIETARY LABELS

Authorization to remove copyright notices can be obtained from Devellion Limited for a one time fee. This fee authorizes you to remove the output of copyright notices and you will be issued with a copyright removal key. These copyright notices include "(Powered by CubeCart)" in the browser title and "Powered by CubeCart" page footer. It does not give you authorization to remove any copyright notices in the script source header files nor any other rights. All graphics can be modified and is actively encouraged.

SOFTWARE LICENSE KEY USAGE

Upon purchase of a software license key you are permitted to operate one CubeCart powered live store. Multiple software license keys can be purchased if you plan to operate more than one live store however it will be possible to install as many development stores as you want on the same website domain / IP address. Development stores must not publicly accessible through search engines, hyperlinks or advertising. This can either be achieved with the use of password protection or by ensuring no hyperlinks are made to it. The Licensor decides what is deemed as a live store and development store with reason. The Licensees software license key will become locked to the first location it is setup on and it will never expire. The Licensor reserves the right to suspend or disable any software license key at any time without notification. The administration control panel of your store will be inaccessible after a short period of time if the software license key has been disabled, suspended or for a number of possible other technical situations. If the administration control panel becomes blocked due to a technical situation a sales or support representative of the Licensor will provide assistance rectifying the situation whether the Licensee has an active technical support plan in place or not.

An official representative of the Licensor can reset a software license key so that it may be used on a new store or if the Licensee moves to an alternative hosting account or server. The Licensee accepts that the administration control panel of the old store will automatically be disabled after a short period of time unless an additional software license key is purchased for it and applied to it.

COPYRIGHT REMOVAL KEY USAGE

Upon purchase of a copyright removal key you are permitted to remove the aforementioned proprietary notices. A single key must be used for each domain and may not be used more than once. By agreeing to this license agreement you understand that an individual domain is a single store install by the dictionary definition "A territory over which rule or control is exercised". To prevent confusion you may not use a key to remove copyright on unlimited store installs on one website domain.

An official representative of the Licensor can reset a copyright removal key to be reused if a fresh installation is required of the same store or you wish to transfer it to a new store terminating the current store. They can however reserve the right to refuse the reset of a key at any time for any reason.

OWNER/CREATOR - Devellion Limited

Devellion Limited is a company registered in England & Wales under number 5323904. Registered Office: 5 Bridge Street, Bishops Stortford, Hertfordshire, CM23 2JU

SCHEDULE E

Terms and Conditions for web design

1. Definitions

In this schedule the following words and expressions have the following meanings:

1. **Acceptance Tests**
the acceptance tests to be implemented by you in accordance with clause 5c.
2. **Actual Delivery Date**
the actual date that the Website and Website Documentation are delivered by us in accordance with the provisions of this agreement.
3. **Business Day**
a day on which clearing banks are usually open in the City of London.
4. **Charges**
the charges to be levied by us in respect of the Website in accordance with clause 6.
5. **Commencement Date**
The day after you have placed an order in accordance with our quotation and paid 40% of the Charges to us and we have accepted your order.
6. **Completion**
when the Website meets the Requirements and Completion shall be construed accordingly.
7. **Completion Date**
the date specified in our quotation, as revised in accordance with this agreement, by which that part of the Website to which the term relates is to be Completed.
8. **Confidential Information**
any information in any form concerning the business, accounts, finances, research projects, discount policy, pricing policy, future business strategy, marketing, tenders, price sensitive information, employees, current and planned products, intellectual property and trade secrets and any other plans or strategy of ours or yours.
9. **Customer Material**
The material for inclusion in the Website to be provided by you as specified in our quotation.
10. **Deliverables**
the Website, the Graphic Design, the Northway Software, the Third Party Software as is required by the context.
11. **Delivery Address**
the address for the delivery of the Website and Website Documentation specified in our quotation.
12. **Detailed Specification** the written specification for the Website including, without limitation, the information set out in our quotation and the modifications to be prepared by us and as the same may be altered from time to time pursuant to clause 7.
13. **Equipment**
the hardware identified in our quotation..
14. **Expert**
a person appointed under clause 13c.
15. **First Repeat Acceptance Tests**
as defined in clause 5d.
16. **Graphic Design**
The design of the screens of the Website and graphic material to be included on the screens to be designed by us in accordance with our quotation.
17. **Intellectual Property**
patents, patent applications, copyright, registered design, trade marks, trade mark applications, trade names, moral rights under Sections 77 80 and 84 of the Copyright Designs and Patents Act 1977 or knowhow, including without limitation, other similar industrial or commercial rights.
18. **Intellectual Property Infringement**
infringement of the Intellectual Property of a third party.
19. **Northway Software**
the computer programs developed and



- designed by us which are identified in the Detailed Specification.
20. **New Release**
any improved modified or corrected version of the Northway Software from time to time issued by us.
 21. **Object Code**
the actual machine language which the computer executes.
 22. **Relevant Event**
a dispute or difference as to the construction or effect of this agreement or the rights duties or liabilities of the parties hereunder or any matter or event connected with or arising out of this agreement.
 23. **Requirement Specification**
the written statement prepared by you and agreed by us which sets out your requirements for the website and "Requirements" shall be construed accordingly.
 24. **Second Repeat Acceptance**
as defined in clause 5e.
 25. **Source Code**
computer programs in a traditional form normally used by humans for reading, writing or modifying programs.
 26. **Stages**
the numbered-stages for the implementation of the Website described in our quotation.
 27. **Term**
the period from the Commencement Date until the Completion Date for the Website set out in our quotation or until prior termination in accordance with this agreement.
 28. **Test Data**
test data suitable to assess whether the Website meets the Requirements and the results you expect to obtain from the operation of the Website on such test data.
 29. **Third Party Software**
the software of a third party to be incorporated into the Website which is identified in our quotation. Specifically Cubecart.
 30. **Timetable**
the timetable specifying the dates for the completion of each of the Stages of the Website set out in our quotation
 31. **Website Documentation**
the documentation in respect of the Website identified in our quotation.
 32. **Website**
the website in Object Code to be designed and written by us pursuant to our quotation.
2. All references to a statutory provision include references to:
 1. any statutory modification, consolidation or re-enactment of it, whether before or after the date of this agreement, for the time being in force;
 2. ii all statutory instruments or orders made pursuant to it; and any statutory provision of which that statutory provision is a re-enactment or modification.
 3. Words denoting the singular include the plural and vice versa; words denoting any gender include all genders; and words denoting persons include corporations, partnerships, other unincorporated bodies and all other legal entities and vice versa.
 4. Unless otherwise stated, a reference to a clause, party or a schedule is a reference to respectively a clause in or a party or schedule to this agreement. The clause headings are inserted for ease of reference only and do not affect the construction of this agreement.
2. **Our obligations**
 1. Our quotation will be prepared on the basis of the Requirements Specification and is subject to the following terms and conditions. The placing of an order with us is to be deemed to be your acceptance of such terms and conditions. No contract will come into being until we have

accepted your order and you have paid us 40% of the total sum quoted which shall not be refundable.

2. In consideration of the payment by you of the Charges to be levied by us in accordance with clause 6 and subject our the terms and conditions, we shall:
 1. design and write the Website for use with the Equipment to fulfil the Requirements Specification;
 2. design and write the Website Documentation for use in association with the Website;
 3. achieve Completion of the Website and Website Documentation by the Completion Date.
3. **Detailed Specification**
 1. Immediately after the Commencement Date we will commence in collaboration with you the preparation of the Detailed Specification to achieve the Requirements.
 2. We will use all reasonable endeavours to complete the preparation of the Detailed Specification by the date set out in our quotation or as soon as possible after that date.
 3. If you require an amendment to the Detailed Specification to take account of any application, function or performance criteria not specified in the Requirements Specification, the parties will agree a reasonable revision to the Timetable, the Charges and the Completion Date.
 4. Immediately upon completion of the Detailed Specification we will submit it to you for approval.
 5. You will within five Business Days of receipt of the Detailed Specification by notice served upon us, either approve it or respond to us with such comments and/or requests for amendment as you reasonably judge appropriate.
 6. If you fail to approve the Detailed Specification or respond with comments and/or requests for amendment within the period specified in clause 3.5., you will be deemed to have approved the Detailed Specification.
 7. We will take account of all reasonable comments and/or requests for amendment received from you pursuant to clause 3.5., at which time the parties will agree a reasonable variation in the Timetable and we will incorporate the comments and/or requests in a revised version of the Detailed Specification to be prepared and delivered to you as soon as is reasonably possible.
 8. The process described in clauses 3d. to 3g. will be repeated until such time as you will have approved, or will be deemed to have approved or the Expert has approved, the Detailed Specification.
4. **Writing of the Website and Website Documentation**
 1. Immediately upon the approval by you of the Detailed Specification we will commence writing the Website and the Website Documentation upon the basis of and in compliance with the Detailed Specification.
 2. We will use all reasonable endeavours to complete the writing of the Website and Website Documentation and to deliver them to the Delivery Address by the date set out in the Timetable or as soon as reasonably possible after that date. The Website and Website Documentation will be delivered notwithstanding any modifications requested by you which are outstanding.
 3. On or before the dates set out in the Timetable you will submit to us the Customer Material and the Test Data.
 4. You warrant to us that you are entitled to use the Client Material on the Website and that using the Client Material is not in breach of the Intellectual Property of any third party or is otherwise illegal.
5. **Testing and acceptance of Website**
 1. We will by notice to you within five Business Days of receipt of the Test Data either approve or reject it. We will only be entitled to reject the Test Data upon the basis that, and by detailing the manner in which, it requires the Website to operate in a manner not provided for by the Detailed Specification. We will be deemed not to have approved the Test Data if we fail to approve it within five Business Days of receipt and such failure will be deemed to be a Relevant Event. The Expert will determine whether we will be deemed to have approved the Test Data.
 2. You will immediately upon receipt of our rejection of the Test Data pursuant to clause 5.1 make all such alterations to the Test Data as will in the circumstances be reasonably necessary and will resubmit the altered Test Data for approval by us. The provisions of clauses 5.1. and 5.2. will



- apply in the same manner with appropriate changes for context until such time as we approve, or are deemed to approve, the Test Data.
3. You will implement the Acceptance Tests within five (5) Business Days of your receipt of our notification that the Website is complete.
 4. If the Website fails the Acceptance Tests then we will implement, free of charge, such alterations or modifications to the Website and the Website Documentation as we in the circumstances reasonably judge necessary and in sufficient time to make possible the repetition of the Acceptance Tests by you in the presence of our employees as soon as is reasonably practical (the "First Repeat Acceptance Tests").
 5. If the Website fails the First Repeat Acceptance Tests then you may at your option require us by written notice to immediately implement such further alterations or modifications to the Website and Website Documentation free of charge as we will reasonably judge necessary to enable the Website to pass repeat Acceptance Tests (the "Second Repeat Acceptance Tests"). The Second Repeat Acceptance Tests will be carried out by you in the presence of our employees as soon as is reasonably practical. If we have not completed such alterations or modifications to the Website within a reasonable period after you notify us that the Website failed the First Repeat Acceptance Tests or if the Website fails the Second Repeat Acceptance Tests then you will be entitled to either:
 1. accept the Website subject to such refund of the Charges as we and you agree. If we fail to agree such refund within seven Business Days then you may refer the matter for settlement in accordance with the disputes procedure set out in clause 13 or
 2. subject to clause 5f terminate this agreement by written notice to us.
 6. Notwithstanding clause 5e ii., you will not be entitled to terminate this agreement during the first year of the Term by reason of the application of clause 5f. to a modification.
 7. We will provide you with all such assistance and advice as you will from time to time reasonably require in the process of testing the Website pursuant to clause 5.
 8. You shall commence testing the Website as soon as is reasonably practicable after receipt of the assistance and advice to be supplied under clause 5g..
- 6. Charges**
1. We will levy the Charges by the submission of invoices in accordance with clause 6b.iii, in respect of the Website on the dates and for the amounts set out in the our quotation.
 2. Where the Charges are stated in the our quotation to be an estimate:
 1. the estimate shall give full details of the basis on which it has been prepared;
 2. if it appears to us that the estimate will be exceeded we shall immediately notify you and shall not carry out any work in excess of the estimate without your written approval of a revised estimate; and
 3. we shall use our best endeavours to complete the Website within the estimate.
 3. Each invoice will be sent to you at the Delivery Address. You will pay the Charges within twenty (20) Business Days of the date of an invoice.
 4. The Charges will be inclusive of the travel accommodation and subsistence expenses incurred by our staff in attending at the Delivery Address.
- 7. Modifications**
1. You will be entitled at any time prior to the Actual Delivery Date to request us in writing to modify the design of the Website.
 2. You will provide us with full particulars of any requested modification and such further information as we will reasonably require.
 3. Within ten Business Days of receipt of a request pursuant to clause 7a. we will inform you in writing of the alterations to the Detailed Specification, Timetable and Charges that we reasonably judge necessary as a result of the request. We shall be entitled to make a reasonable charge for the cost of preparing details of the alterations to the Detailed Specification, Timetable and Charges, provided the basis of such Charges have first been agreed by you.
4. If you notify us that you will proceed with the modification then the Timetable and Charges will be amended in the manner indicated by us pursuant to clause 7b.
 5. If we modify the whole or any part of the Website in accordance with this clause we will make all appropriate related modifications to respectively the Detailed Specification and the Website Documentation
- 8. Intellectual Property rights and title**
1. The copyright and all other Intellectual Property and Confidential Information in the Northway Software will remain in our ownership.
 2. We grant you a perpetual non exclusive royalty free licence to use the Northway Software for all purposes of and associated with your business including (without limitation) a licence to make Enhancements to the Northway Software if we are unable or unwilling to do so.
 3. We assign to you with full title guarantee the copyright in the Object Code and the Source Code of the Website, other than Northway Software and Third Party Software, and the website Documentation as and when written or created throughout the world for the full period of copyright, including all renewals and extensions, in so far as we are able to do so, with effect from the completion of the Website and the Website Documentation.
 4. You must indemnify us and keep us indemnified against all and any losses, claims, damages, costs, charges, expenses and other liabilities which we may sustain or incur arising out of or in connection with any breach by you of clause 4d.
- 9. Support**
1. We will provide you with email and telephone support for your use of the Website without charge to the extent that we in our discretion believe is reasonably necessary. Telephone support hours are Monday to Saturday 09:00 to 18:00.
- 10. Copies for you**
1. We will during the Term forward to you up to date back up text of the Website and the Website Documentation on the first day of each month commencing on the Actual Delivery Date unless no changes have been made since the last copies were delivered to you.
- 11. Moral Rights**
1. We will procure that all rights under sections 77, 80 and 84 Copyright Design and Patents Act 1988 relating to the Graphic Design and the Website Documentation are waived in writing by the persons entitled to them.
- 12. Warranties**
1. We warrant that:
 1. we will develop the Website using reasonable care and skill;
 2. any goods supplied will be of satisfactory quality and fit for their intended purpose;
 3. our title to and property in the Deliverables is free and unencumbered; and
 4. the Website and Website Documentation will conform to the Detailed Specification in all material respects.
 2. We will upon receipt of a notice alleging a breach of the warranty set out at clause 12.1. use our best endeavours to remedy the breach of such warranty free of charge as soon as possible.
- 13. Disputes**
1. If either party considers there to be in existence a Relevant Event they will immediately give notice of it to the other party.
 2. Immediately upon receipt of a notice under clause 13.1. the parties will use reasonable endeavours to resolve the Relevant Event and record any agreement reached between them in writing.
 3. If the parties have not reached an agreement in writing to resolve the Relevant Event within ten (10) Business Days of the service of the notice under clause 13a. hereof either of them may referred it to such Expert as they will jointly nominate.
 4. If we and you fail to nominate an Expert within fifteen (15) Business Days of the service of the notice under clause 13a. then the Expert will be nominated at the request of either party by the President for the time being of the Institute of Arbitration.

5. The Expert, whether appointed under clause 13c or 13d, will act as an expert whose decision (which will be in writing) will, except in the case of manifest error, be final



and binding upon both parties. At the request of either party the Expert will give reasons in writing for his decision.