



Introduction

The client's approval for ongoing or continuous work to commence or working in a partnership with Tangy Media over an extended period is deemed a contractual agreement between the business partner or client and Tangy Media. Approval for the ongoing work to commence as indicated by the completion of the appropriate Specification Document with the clients signature or payment of the first Maintenance / Support / Search Engine Optimisation fee shows that the client accepts the ongoing terms and conditions outlined in this document and agrees to abide by them throughout the duration of the ongoing project.

Any ongoing services are supplied through an agreement made between:

- (1) Tangy Media whose registered office is at 88 Hampton Street, Tetbury, Gloucestershire, GL8 8LX ("The Contractor");
- (2) The End Client / Customer whose registered office is noted within the final specification document ("The Client").

RECITALS:

The Contractor has worked on and developed the Clients Internet based web site and has agreed to maintain the said web site upon the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED as follows:

1. Definitions

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“the Performance Standards”	Means the performance standards to which the Maintenance Services are to be performed as described in Clause 5 and the Schedule;
“the Web Site”	Means the Client’s web site referred to in the recital above;
“the Program Materials”	Means the computer programs provided by the Contractor to the Client which embody the design and structure of the Web Site, as amended or enhanced from time to time;
“the Maintenance Services”	Means the maintenance services to be provided by the Contractor pursuant to Clause 5 of this Agreement;
“the Maintenance Charge”	Means the periodic charge for the Maintenance Services specified in the Schedule as increased from time to time pursuant to Clause 3;
“the Commencement Date”	Means the date on which this Agreement shall become effective as specified in the Schedule;
“the Initial Period”	Means the initial period of this Agreement as specified in the Schedule.
“SEO”	Defined as <i>Search Engine Optimization</i> . If applicable, the specific definition of this term applicable to the Web Site will be explained in clause 2.

2. Services to be performed

- 2.1. Maintenance Services: The Client may at any time during one of the periods defined in The Schedule, contact The Contractor and request an alteration to the Web Site. Subject to approval and available time as defined in The Schedule, this request will be performed within the time frame specified in The Schedule.
- 2.2. Search Engine Optimization (SEO): Subject to available time and periods as defined in The Schedule, this service will be on going. The service is concerned with and aims to: Improve the ranking of the website within popular internet search engines with the intention of maintaining the highest possible position in search engine result lists when searching using a number of search terms and key phrases that are directly relevant to the industry and business of the client.

The Contractor hereby agrees to provide the Maintenance Services mentioned in clause 2 above upon the terms and conditions hereinafter contained.

3. **Payment**

- 3.1. In consideration of the Maintenance Services the Client shall pay the Maintenance Charge periodically in advance as specified in the Schedule. The Maintenance Charge shall be paid without prior demand and no payment shall be considered made until it is actually received by the Contractor.
- 3.2. Any charges payable by the Client hereunder in addition to the Maintenance Charge shall be paid within 30 days after the receipt of the Contractor's invoice therefore.
- 3.3. The Contractor shall be entitled at any time and from time to time after the expiry of the Initial Period to increase the Maintenance Charge to accord with any change in the Contractor's standard scale of charges by giving to the Client not less than 90 days' prior written notice. Where and whenever such notice is given, the Client shall have the right to terminate this Agreement as from the date on which such notice expires by giving to the Supplier written notice of termination not less than 30 days before such date.
- 3.4. The Price and any additional charges payable under this Agreement are exclusive of Value Added Tax which shall be paid by the Client at the rate and in the manner for the time being prescribed by law.
- 3.5. If any sum payable under this Agreement is not paid within 7 days after the due date then (without prejudice to the Contractor's other rights and remedies) the Contractor reserves the right to charge interest on such sum on a day to day basis (as well after as before any judgement) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 2 per cent above the Bank Of England base rate from time to time in force compounded quarterly. Such interest shall be paid on demand by the Contractor.

4 **Duration**

This Agreement shall commence on the Commencement Date, shall continue for the Initial Period and shall remain in force thereafter unless or until terminated by either party giving to the other not less than 6 months written notice of termination expiring on the last day of the Initial Period or at any time thereafter but shall be subject to earlier termination as provided elsewhere in this Agreement.

5 **Error Correction**

- 5.1 If the Client shall discover any error in the operation or presentation of the Web Site then the Client shall within 14 days after such discovery notify the Contractor in writing of the defect or error in question and provide the Contractor (so far as the Client is able) with a documented example of such defect or error.
- 5.2 Upon receipt of such notification from the Client the Contractor shall begin work on correcting such defect or error in accordance with the Performance Standards. If the Client requests support in an emergency the Contractor shall use all reasonable efforts to fulfil the request as quickly as possible.
- 5.3 The foregoing error correction service shall not include service in respect of:
 - 5.3.1 defects or errors resulting from any modifications of the Web Site made by any

person other than the Contractor;

- 5.3.2 incorrect use of the Web Site or error in the operation thereof on the part of the Client or its employees or agents;
 - 5.3.3 errors resulting from faults in equipment or software other than that supplied to the Client by the Contractor.
- 5.4 The Contractor shall make an additional charge in accordance with its standard scale of charges from time to time in force for any services provided by the Contractor:
- 5.4.1 at the request of the Client but which do not qualify under the aforesaid error correction service by virtue of any of the exclusions referred to in sub-clause 5.3 above;
 - 5.4.2 at the request of the Client but which the Contractor considers on reasonable grounds not to be necessary.

For the avoidance of doubt nothing in this sub-clause shall impose any obligation on the Contractor to provide services in respect of any of the exclusions referred to in sub-clause 5.3 above.

6 Web Site Operation

During the continuance of this Agreement the Client shall:-

- 6.1 ensure that the Web Site is accessed (to the extent necessary) on behalf of the Client by competent trained employees only or by persons under their supervision;
- 6.2 operate the Web Site in accordance with instructions and training provided by the Contractor in that regard from time to time;
- 6.3 keep full security copies of the Web Site and of the Client's databases and computer records in accordance with best computing practice;
- 6.4 not alter or modify the Web Site in any way whatever nor permit the Web Site to be amalgamated or used in combination with any other Internet Web Site;
- 6.5 not request, permit or authorise anyone other than the Contractor to provide any maintenance services in respect of the Web Site or the Web Site;
- 6.6 co-operate fully with the Client's personnel in the diagnosis of any error or defect in the Web Site;
- 6.7 provide such telecommunication facilities as are reasonably required by the Contractor for testing and diagnostic purposes, at the Client's expense;

7 Proprietary Rights

- 7.1 The copyright and all other intellectual property rights of whatever nature in any corrected or modified versions of the Web Site made pursuant to this Agreement shall belong to the

Client and the Contractor as beneficial owner hereby assigns (by way of future assignment) all such rights to the Client.

- 7.2 Notwithstanding sub-clause 7.1, the Contractor reserves the right to use in any way it thinks fit any programming tools, skills and techniques acquired or used by it in the performance of this Agreement.
- 7.3 The Contractor shall be entitled during the continuance of this Agreement to retain a copy of the Program Materials and of the source code of the underlying computer programs and all other materials necessary for the proper maintenance of the Web Site. Such copies of the Program Materials and source code and other materials shall be held in confidence, shall only be used by the Contractor for the purposes of this Agreement and shall be delivered up (together with all copies thereof) to the Client forthwith upon the termination of this Agreement (howsoever occasioned).
- 7.4 If any corrected or modified version of the Program Materials shall be made by the Contractor pursuant to this Agreement then the Contractor shall promptly deliver to the Client copies thereof together with:
- 7.4.1 the source code of the corrected or modified version of the Programs in the form of a Compact Disk;
 - 7.4.2 all other materials necessary to enable a reasonably skilled programmer to correct, modify and enhance the corrected or modified version of the Program Materials without reference to any other person or document.

8 **Confidentiality**

Each party shall treat as confidential all information obtained from the other pursuant to this Agreement and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this Clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to this Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this Clause. If the Contractor shall appoint any sub-contractor then the supplier may disclose confidential information to such sub-contractor subject to such sub-contractor giving the Client an undertaking in similar terms to the provisions of this clause. The foregoing obligations as to confidentiality shall survive any termination of this Agreement.

9 **Poaching Staff**

The Client shall not without the prior written consent of the Contractor (and so that each of sub-clauses 9.1 and 9.2 below shall be deemed to constitute a separate agreement and shall be construed independently of the other):

- 9.1 At any time during the period from the date hereof to the expiry of six months after the Acceptance Date or the date of termination of this Agreement (as the case may be) solicit or endeavour to entice away from or discourage from being employed by the Contractor any person who is, or shall at any time between the date hereof and the Acceptance Date

or the date of such termination be, one of the Contractor's employees engaged in providing the Services provided however that this provision shall not apply to any person employed by the Contractor whose rate of gross basic contractual remuneration payable by the Contractor as at the date of this Agreement (or as at the date of commencement of such person's employment if such employment shall commence after the date of this Agreement) is less than £15,000.00 per annum;

- 9.2 At any time during the period from the date hereof to the expiry of six months after the Acceptance Date or the date of termination of this Agreement (as the case may be) employ or attempt to employ any person who is, or shall at any time between the date hereof and the Acceptance Date or the date of such termination be, one of the Contractor's employees engaged in providing the Services provided however that this provision shall not apply to any person employed by the Contractor whose rate of gross basic contractual remuneration payable by the Contractor as at the date of this Agreement (or as at the date of commencement of such person's employment if such employment shall commence after the date of this Agreement) is less than £15,000.00 per annum].

10 Termination

- 10.1 Notwithstanding anything else contained herein, this Agreement may be terminated:

10.1.1 by the Contractor forthwith on giving notice in writing to the Client if the Client shall fail to pay any sum due under the terms of this Agreement (otherwise than as a consequence of any default on the part of the Contractor) and such sum remains unpaid for 14 days after written notice from the Contractor that such sum has not been paid (such notice to contain a warning of the Contractor's intention to terminate); or

10.1.2 by either party forthwith on giving notice in writing to the other if the other commits any material breach of any term of this Agreement (other than any failure by the Client to make any payment hereunder in which event the provisions of paragraph 10.1.1 above shall apply) and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or

10.1.3 by either party forthwith on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

- 10.2 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

- 10.3 Any termination of this Agreement (howsoever occasioned) shall not of itself affect the Client's right to continue to use the Web Site.

11 **Assignment**

Neither party shall assign or otherwise transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the other.

12 **Force Majeure**

Neither party shall be liable for any delay in performing any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying and such party shall be entitled to a reasonable extension of time for the performance of such obligation.

13 **Liability**

13.1 The Contractor shall not be liable for any loss or damage sustained or incurred by the Client or any third party (including without limitation any loss or use of the Program Materials or loss of or spoiling of the Client's data) as a result of any defect or error in the Program Materials or the Web Site except to the extent that such loss or damage arises from any unreasonable delay by the Contractor in providing the Maintenance Services and then only to the extent not excluded by this Agreement.

13.2 The Client shall indemnify the Contractor and keep the Contractor fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Client, its employees, agents or sub-contractors.

13.3 Except in respect of injury to or death of any person (for which no limit applies) the respective liability of the Contractor and the Client under sub-clauses (1) and (2) in respect of each event or series of connected events shall not exceed £100,000.00.

13.4 Notwithstanding anything else contained in this Agreement the Contractor shall not be liable to the Client for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

13.5 The Contractor shall not be liable to the Client for any loss arising out of any failure by the Client to keep full and up-to-date security copies of the Web Site and the Program Materials.

14 **Waiver of Remedies**

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach of no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

15 **Notices**

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.

16 **Headings**

The headings to the Clauses of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

17 **Law**

This Agreement shall be governed by and construed in accordance with laws of England.

18 **Disputes**

Any dispute which may arise between the parties concerning this Agreement shall be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the English Courts for such purpose.

Performance Standards:

1. Error in operation or presentation of one or more pages: Fourteen days from notice
2. Error in operation or presentation of entire web site: Forty eight hours from notice
3. General web site updates inclusive of time sensitive aspects: As agreed / detailed within the individual specification document.
4. Flexible maintenance time dedicated to the client by the contractor for use as Technical Support, Search Engine Optimization (SEO), marketing account management, web site updates and all other web site maintenance related activities will not exceed a set time as detailed in the individual project specification.