

**THIS WEB HOSTING SERVICES AGREEMENT** is made on **[COMMENCEMENT DATE]**

**BETWEEN:**

- (1) Parish Websites Limited (Reg. No. 5417450) of Deanery Cottage, Church Street, Godalming, Surrey GU7 1EW ('the **Company**') and
- (2) **[NAME OF PARISH COUNCIL]** of **[ADDRESS OF PARISH COUNCIL]** ('the **Parish Council**')

**NOW IT IS AGREED** as follows:

**DEFINITIONS**

<b>Commencement Date</b>	Means the date of the commencement of this Agreement being: <b>[COMMENCEMENT DATE]</b>
<b>Development Fees</b>	Means the one-off fees paid by the Parish Council to the Company for the development and set-up of the Website, Site Admin Section and Email Services.
<b>Domain</b>	Means the website domain name of the Parish Council.
<b>Email Services</b>	Means POP3 and Webmail services provided by the Company to the Parish Council.
<b>Hosting Fees</b>	Means the annual fees paid by the Parish Council to the Company for the provision of website hosting and technical support.
<b>Renewal Date</b>	Means the date for renewal of this Agreement being: <b>[RENEWAL DATE]</b>
<b>Server</b>	Means the server or servers hosted by the Company (and it's Third Party Suppliers) for the provision of the Services.
<b>Services</b>	Means the provision of a Website, Site Admin Section, Email Services and Support for the duration of the Term, as further detailed in clause 1 below.
<b>Site Admin Section</b>	Means the Company's bespoke Website content management system.
<b>Support</b>	Means the service level provided by the Company to the Parish Council during the Term of the Agreement, as further detailed in clause <b>XXX</b> below.
<b>Term</b>	Means the term of this Agreement being: <b>[TERM]</b>
<b>Update Request Tool</b>	Means the official support ticket method of the Company found at <a href="http://www.admin.parishcouncil.net">www.admin.parishcouncil.net</a> .
<b>Website</b>	Means the website of the Parish Council hosted on the Company's Servers under the Domain.
<b>Website Development Brief</b>	Means the detailed instructions for the development of the Website as provided by the Parish Council to the Company.

**1 Services**

The Company agrees to provide to the Parish Council the Services on the terms described in this Agreement. The Company agrees to develop the website in accordance with the instructions of the Parish

Council (as detailed in the Website Development Brief) and to make accessible the Website on the Server owned or operated by the Company and allow storage of information published by or received by the Parish Council and further agrees to provide Support, Upgrades and Updates as further detailed in clauses 1.1 to 1.3 below. Nothing under this Agreement shall affect the Parish Council's statutory rights as a customer in particular but without limitation those under the Consumer Credit Act 1974 or the Data Protection Act 1998.

1.1 **Support** – The Company agrees to respond to all requests for technical or administrative support received from the Parish Council through the Update Request Tool on the following basis:

1.1.1 Normal Requests – within 5 working days (as defined as Monday – Friday from 9am to 5pm).

2.1.2 Urgent Requests – within 1 working day (as defined in clause 1.1.1 above).

3.1.3 Urgent Mobile Requests – within 6 hours

1.2 **Upgrades** – All upgrades to Website scripts and applications provided by the Company will be made to the Website as and when they become available.

1.3 **Updates** – All updates to the Website will be made within 5 working days of such request being made under clause 1.1 above, unless the Company has given notice and reason to the Parish Council of an alternative time-frame.

## 2 Fees

The Parish Council agrees to pay to the Company the fees specified above as the Hosting Fees and the Development Fees (together 'the Fees'). All fees are due on execution of this Agreement. All fees are payable within 60 days of the date of an invoice to the Parish Council from the Company.

## 3 Taxes

3.1 All payments due under this Agreement and subsequent invoices are inclusive of applicable taxes.

## 4 Term

This Agreement shall be effective from the Commencement Date for a period of one year ('the Term') and thereafter from year to year subject to earlier termination as set out in this clause unless and until either party gives to the other not less than 30 days notice in writing. Either party may terminate this Agreement without notice upon the other party's breach of any term, condition or obligation under this Agreement if such breach is not remedied (if remediable):

- (i) within 10 days from the date of written notice with regard of any monetary obligation, and
- (ii) within 30 days from the date of written notice with regard to any other breach.

## 5 Parish Council's Responsibilities

5.1 In addition to the obligations of the Parish Council as otherwise specified in this Agreement, the Parish Council shall be solely responsible for the following:

1.1.1 the accuracy and content of any information provided by the Parish Council to the Company; and

2.1.2 any information, programs and other information that the Parish Council receives as a result of the use of the Services, including without limitation, the entire responsibility of any losses of data, programs, breaches of security, viruses and disabling or harmful devices that the Parish Council may download or otherwise experience as a result of the Parish Council's use of the Services.

5.2 The Parish Council shall notify the Company at least 7 days in advance if it intends to change its business details or stop providing any of the services being offered through the Company.

5.3 The Parish Council agrees to use the Services in a manner consistent with any and all applicable laws and regulations.

## 6 Ownership

All materials, documentation, computer programs, inventions (whether or not patentable), pictures, audio, video, artistic works and all works of authorship, including all worldwide rights therein under

patent, copyright, trade secret or other property right, created or developed by the Company while providing Services (defined as the software written by the Company for the purpose of making and running the website, and collectively, 'Work Product') are owned by the Company. The Company shall be liable to return any artwork or other material supplied by the Parish Council for the purposes of Services. Work Product shall not include the Confidential Information (defined below) of the Parish Council, nor the Website Content (as defined by the photos, text and graphics of the Website). If ownership of all right, title and interest of the intellectual property rights in the Work Product shall not otherwise vest exclusively in the Company, the Parish Council assigns to the Company and upon the future creation thereof automatically assigns to the Company without further consideration, the ownership of all Work Product. On request the Company shall provide to the Parish Council a CD copy of the Website, inclusive of Work Product, on the strict licence that the Website and Work Product be used on an alternative Server with an alternative company, but that all rights relating to software, HTML, PHP and other coded materials be wholly retained by the Company, and the Parish Council agrees not to reverse engineer or provide copies of the software, HTML, PHP and other coded materials to any third party other than for the provision of alternative hosting services.

## **7 Limited warranty**

The Company warrants that for a period of 90 days from the date of first installation of the Parish Council's completed Website on the server described above, the coding of such Website shall be reasonably HTML-compliant. Notwithstanding the foregoing, the sole and exclusive remedy for a breach of the warranties contained in this clause 7 shall be that the Company shall replace the nonconforming coding to make such Website reasonably HTML-compliant. The Parish Council acknowledges that HTML is an industry standard that contains some ambiguous provisions and that does not completely address all issues associated with the coding of Websites accessible via the Worldwide Web. The Parish Council also acknowledges that HTML is a standard that will be amended from time to time and that not all 'browsers' used by third parties to access the World-wide Web implement HTML in the same way. Variations in HTML coding associated with ambiguities or revisions to the HTML standard or variations among Worldwide Web browsers shall not be the basis for a claim of breach of the Company's warranties under this Agreement. The warranties described in this clause 7 are subject to the limitations of liability described below. Except as provided in this clause 7, the Company does not make any express or implied warranties with respect to the services or any products provided under this Agreement, including but not restricted to the implied warranties of merchantability and fitness for a particular purpose. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to the Parish Council.

## **8 Limitation of liability**

In no event (death or personal injury excepted) will the Company be liable to the Customer for any indirect, incidental or consequential damages, or loss of income arising out of the Services or any products provided under this Agreement, even if the Company has been advised of the possibility of such damages. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to the Customer. The Company's liability to the Customer for actual damages for any cause whatsoever, regardless of the form of the action, will be strictly limited to 125% of the Fees paid for the prior 12 months.

## **9 Limitations of service**

The Company does not guarantee that the Parish Council or any third parties will be able to access the Website created by the Company at any particular time. The Company access services are provided on an 'as-is, as-available' basis. The Customer acknowledges that the need for routine maintenance and error correction may result in down time and that the Company cannot control the timing or volume of attempts to access the Company's server.

## **10 Confidential Information**

10.1 Each party shall use the same care and discretion, but in no event less than reasonable care and discretion, to prevent disclosure, publication or dissemination of the other party's Confidential Information (defined below) as it employs with similar information of its own; and shall not use, re-produce, distribute, disclose or otherwise disseminate the Confidential Information except in connection with the performance of its obligations under this Agreement.

- 10.2 As used in this Agreement the term 'Confidential Information' means any and all data and information relating to the business of the disclosing party:
- 1.2.1 of which the receiving party becomes aware as a consequence of or through this Agreement;
  - 1.2.2 which has value to the disclosing party and is not generally known by its competitors;
  - 1.2.3 which is treated by the disclosing party as confidential; and
  - 1.2.4 which has been reduced to tangible form and marked clearly and conspicuously with a legend identifying its confidential or proprietary nature, provided, however, that Confidential Information does not include any data or information which is already known to the receiving party, or which
    - 1.2.4.1 has become generally known to the public through no wrongful act of the receiving party;
    - 1.2.4.2 has been rightfully received by the receiving party from a third party without restriction on disclosure and without, to the knowledge of the receiving party, a breach of an obligation of confidentiality running directly or indirectly to the other party;
    - 1.2.4.3 has been disclosed pursuant to a requirement of a governmental agency or of law without similar restrictions or other protection against public disclosure, or is required to be disclosed by operation of law;
    - 1.2.4.4 is independently developed by the receiving party without use, directly or indirectly, of the Confidential Information received from the other party; or
    - 1.2.4.5 is furnished to a third party by the disclosing party under this Agreement without restrictions on the third party's right to disclose the information. Confidential Information may include, but is not limited to, information relating to the products, processes or financial affairs of the disclosing party.

## 11 Data transmission

The Company may collect, hold, control, use and transmit data obtained from and about the Parish Council and visitors to the Website in the course of providing the Web Hosting Services and the website. By signing this Agreement the Customer agrees to such data being so used and further agrees that it may be transmitted to others in accordance with the Company's registration under the Data Protection Act 1998.

## 12 Force majeure

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 6 months, either party may terminate this Agreement by written notice to the other party.

## 13 General

- 13.1 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 13.2 In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys fees.
- 13.3 All notices under this Agreement shall be in writing and shall be deemed given when personally delivered, when sent by confirmed fax, or 3 days after being sent by prepaid first class post to the address of the party to be notified as set out in this Agreement or such other address as such party last provided to the other by written notice.
- 13.4 Neither party shall have any right or ability to assign, transfer, or sub-license any obligations or benefit under this Agreement without the written consent of the other (and any such attempt shall be void), except that a party may assign and transfer this Agreement and its rights and obligations under this Agreement to any third party who succeeds to substantially all its business or assets.

- 13.5 If any portion of this Agreement is illegal or unenforceable, such portion(s) shall be excluded from this Agreement to the minimum extent required and the balance of this Agreement shall remain in full force and effect and enforceable.
- 13.6 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement and can only be modified or waived by a subsequent written agreement signed by both parties. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.
- 13.7 The parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 13.8 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties accept the non-exclusive jurisdiction of the English courts over any claim or matter arising under or in connection with this Agreement.

**Signed by the following as duly authorised signatories:**

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(Parish Websites Limited)	(Neil Pfister, Director)	(date)
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[        ] PARISH COUNCIL

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(Council Name)	(Authorising Officer - sign)	(date)
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(print name and position)

Please sign and date (by authorising officer – either RFO / Clerk or Chairman) and return to Parish Websites Ltd. Remember to retain a copy for your own records.