

Website Design, Programming, Hosting and Maintenance License Agreement. Terms and Conditions

This World Wide Web Site, Construction and Maintenance Licence Agreement "the Agreement". Is entered into between Popcorn Web Design Ltd "Popcorn" office situated at 2 Riverside Business Park, Stoney Common Road, Stansted Mountfitchet, Essex. CM24 8PL
and
Client Name.

1. Recitals

Popcorn has delivered to the Customer an estimate or a proposal (the "Estimate / proposal") or in the case of smaller projects, a quotation, setting forth details, specifications, payment schedule and time-table for the Customer's Internet World Wide Web Site project. The Customer is familiar with the Internet and understands the nature of the Internet and the parties acknowledge and agree that Popcorn is not responsible for the Internet or World Wide Web Sites or whether it should continue to exist in its present form or whether or not a government or governmental agency, either foreign or domestic, will control, regulate or disband the Internet. The Estimate / proposal has been accepted and approved by Customer. A copy of the Estimate / proposal containing the description of the Project is available on request, if not attached.

The customer desires to engage Popcorn to implement the Estimate / proposal in accordance with the terms and conditions set forth in this Agreement.

2. Definitions

In this agreement the subsequent terms, words and phrases shall have the following meaning:

"**Customer**" shall mean any individual and or corporate body limited and or unlimited and or partnership and or joint venture and or other association of individuals with or without corporate bodies to whom Popcorn shall supply services.

"**Content**" shall mean any text, graphics, photographs, video footage, sound tracks or other visual, aural, or textual means of communication, either existing or specifically created for inclusion in Customer's World Wide Web Site.

"**Technology**" shall mean any and all software, methodology, computer programs, writings, know-how, designs, techniques, or other information, either existing or specifically created for inclusion in Customer's World Wide Web Site.

"**Termination**" shall mean the cessation of the products and services supplied by Popcorn to the Customer.

Unless otherwise specified in this agreement, the singular includes the plural and vice versa.

3. Delivery

Popcorn shall use best endeavours to deliver the Project to Customer in a form ready for use by Customer and its designated end-users (which designated end-users are described in the Estimate / proposal), unless otherwise agreed by Customer. The delivery of the Project shall be substantially in accordance with the time schedule set forth in the Estimate / proposal, except as otherwise agreed by Customer.

4. Subcontractors

Popcorn may, from time-to-time, engage subcontractors to provide services, such as photography, image libraries, language translation, content, technology or equipment as called for in the Estimate / proposal. Popcorn will be totally responsible for interfacing with such subcontractors and Customer shall not directly contact Popcorn subcontractors without Popcorn's specific written permission. Popcorn will be responsible for obtaining the appropriate confidentiality and nondisclosure agreements from such subcontractors. Popcorn will request from subcontractors representations and warranties with respect to any proprietary information, technology, software and content and indemnification from any patent, copyright or trademark infringement. Popcorn will assign to Customer to the extent permitted by law and contract all warranties, representations and indemnities provided to it by its subcontractors.

5. Ownership

Upon completion of the project, and payment in accordance with this Agreement, Customer shall own the World Wide Web Site, subject to the following terms and conditions:

(a) All original artwork, content, etc. provided to Popcorn by Customer for inclusion in the World Wide Web Site shall remain the exclusive property of the Customer, regardless of whether or not such content was actually used in the World Wide Web Site.

(b) All photography, graphics and design created by Popcorn in the creation of Customer's World Wide Web Site shall on payment in full, transfer to be the property of the customer.

(c) Customer shall be granted a royalty-free license to all new content, whether produced by Popcorn or by others (collectively the "originators") created for use in Customer's World Wide Web Site.

(d) Source code ownership: Upon completion of the project and when full payment has been received by Popcorn the "client side" source code will become the property of the customer. All "server side" source code utilised by and developed for the project shall remain the property of Popcorn Web Design Ltd. Any server side source code bespoke to the project shall be made available to the customer in an unencrypted form at the Customer's request. Any non-bespoke "server side" source code utilised or developed shall be made available to the customer in an encrypted format at the Customer's request. The encryption method used to encrypt the source code will be chosen at Popcorn's discretion.

(e) Customer shall grant express permission for Popcorn to place a small credit or company logo on the Customer Web site.

6. Payment



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The Customer shall pay Popcorn, in return for the products and services, as indicated in the Estimate / proposal, in sterling, set forth in the Estimate / proposal. Payment shall be in accordance with the payment schedule set out in the Estimate / proposal. Popcorn will exercise their statutory right to charge interest under the Late Payment of Commercial Debt (Interest) Act 1988 if the customer does not pay according to the agreed credit terms which are 14 days from date of invoice (Invoices indicated as "Deposit" or "Interim" payments are to be settled prior to commencement or continuation of any work). Popcorn will add 11% surcharge to all accounts recovered through the courts.

Where you are providing content, failure to provide content in a timely manner in an appropriate format will delay the development and delivery of your website. In cases where we believe the website to be complete (possibly not even live on the Internet) but waiting for any remaining content to be provided from you we will raise our final invoice. When the content is supplied we will update the site and "put live" on your instruction.

7. License

Popcorn hereby grants unto Customer a license to the Customer's World Wide Web Site. This license is nonexclusive with respect to software, formatting, commands and other technology utilised by Popcorn in creating World Wide Web Sites for its customers, nonexclusive with respect to content provided by Popcorn in creating World Wide Web Sites for its customers, and an exclusive license to the content which is proprietary to Customer. This license is granted with an understanding that Popcorn has the right to relicense to Customer on an unrestricted basis any software used by it for this Project. Customer agrees and acknowledges that it does not have the right or authority to relicense, distribute or use any of the technology, software or techniques licensed hereunder to any other entity or use such software or technology in any other application or for other use or purposes other than the Project. Further, the license is applicable only to the use of the projects in connection with servers included in the Project or approved by Popcorn in writing.

Where applicable, the terms defined herein will be superseded by the licensing terms and conditions of any software product used in the performance of this Agreement except where express written consent is awarded by the owner of the software.

8. Warranties

Popcorn warrants that it has free and unrestricted title to its software and the right power and authority to utilise the software of any purveyor or subcontractor with whom it deals. Popcorn further warrants that at the time of fulfilment of the contract, an Internet user will be able to access the Customer's World Wide Web Site pursuant to the specifications of the Estimate / proposal but Popcorn makes no warranty with respect to the continuation of the Internet or the accessibility of the World Wide Web Site over time.

For a period of 14 days from the fulfilment of the contract (the "Warranty Period"), Popcorn shall correct any and all errors or system incompatibilities within the World Wide Web Site that were either created or introduced by Popcorn and were not discovered during the testing process. Subsequent to the expiration of the Warranty Period, Popcorn shall charge the customer a fee, to be agreed upon in writing between Popcorn and Customer, for any and all additional work performed on the World Wide Web Site.

Popcorn makes no other warranties, express or implied, nor warranties as to the merchantability or fitness for a particular purpose of its software, the project or estimate / proposal. Popcorn shall pass through to Customer all manufacturer or vendor warranties relating to hardware or software included in the project as to the extent such warranties are provided to site developer.

9. Limitation of Liability

The liability of Popcorn for any error made in performance of the obligations under the Agreement will in no event exceed the fees for such services paid to Popcorn by Customer as set forth in the Agreement. In no event shall Popcorn be liable to Customer or to any end-user for any damages including, without limitation, consequential damages, lost profits or any special damages, whether incurred by Customer or end-user.

10. Confidentiality and Non-Disclosure

Customer agrees that neither Customer, its agents nor its employees shall in any manner, use, make available, make known, divulge or communicate any proprietary information with respect to the Estimate / proposal and Project and the technology utilised by Popcorn for this Agreement or the pricing of the Estimate / proposal without the expressed written permission of Popcorn. Customer agrees to take all appropriate action to protect the confidentiality and proprietary information included in the Estimate / proposal and Project, including appropriate instructions and agreements with employees, agents and consultants. Title to all proprietary rights in the Estimate / proposal and Project shall remain with Popcorn subject to the license contained herein.

11. Popcorn Not Responsible:

Customer acknowledges and agrees that Popcorn is not responsible for, and does not control, the Internet or any information contained thereon (other than the content on Customer's pages included in the Project, the accuracy and reliability of which shall be the sole responsibility of Customer).

Access to the Internet is not provided by Popcorn but by the Customer and their chosen Internet Service provider (ISP). Internet connection problems and related issues are to be the responsibility of the ISP.

Popcorn does not warrant, and does not assume responsibility for, any consequences suffered by any person as a result of Internet access including, without limitation, those suffered by Customer and end-users as a result of accessing such Internet information and content, such as the possibility of contracting computer viruses, accessing information with offensive or inappropriate content, etc.

Popcorn assumes, and shall be responsible for, no damages suffered by any person as a result of obtaining Internet access in connection with the Project or otherwise, including risks associated with the conduct of on-line commerce. Customer acknowledges and agrees that all users (including Customer and its end-users) must exercise their own due diligence before relying on any such information available on the Internet, and must determine that they have all necessary



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rights to copy, publish or otherwise distribute any such information available on the Internet under applicable copyright laws. Customer acknowledges and consents to the foregoing, and shall obtain the acknowledgement and consent to the foregoing of all users which obtain access to the Internet through the Project. Popcorn shall be an express third-party beneficiary of such acknowledgment and consent.

12. Indemnification

Popcorn shall indemnify and hold Customer harmless from and against any claim of infringement of a U.K. patent or copyright based upon software provided; Customer gives Popcorn prompt notice of all rights to defend any such claim. Popcorn shall have the right to settle any claim and, at Popcorn's option, provide Customer (i) paid up license, (ii) substitute, a functionally equivalent software for the alleged infringing software or (iii) a refund of the sums paid to Popcorn under the Estimate / proposal reduced by one-third (1/3) each year for three (3) years.

The customer shall provide all content for the website and shall guarantee that they own or that they have full permission to use any text, images, videos, designs or logos that they supply. The customer will fully indemnify Popcorn Web Design Ltd against any copyright or intellectual property right claim arising from material supplied by the customer.

13. WebWorks

We strongly advise that you take out a support package with Popcorn once your website is complete. Your website is a valuable tool and therefore in situations where your website is, for example, not displaying properly we can be here to fix it for you as soon as is reasonably possible.

The following 6 items are additional terms and conditions for Popcorn's Web Site Management Program (WebWorks) and only apply to customers who have signed up to this service.

Service. Popcorn will provide a package of site management services to the customer's web site on a monthly basis from the commencement date. If Popcorn developed the web site, this date will be effective from when the site was launched onto the Internet. Full details of this service were presented within the Estimate / proposal or are available upon request. Popcorn retains the right to alter the specific details of the service where factors beyond Popcorn's control apply. The details of this service are explained in our separate WebWorks Document.

Search Engines. Popcorn cannot give any warranty or guarantee as to placement of the listing as it is left to the sole discretion of the search engines editor reviewing the listing nor that the site will be held by the search engine for any given period. Popcorn will provide best practice advice on key phrase selection but cannot accept liability for the varying and changes ways in which search engines operate. Popcorn reserves the right to change its list of top search engines companies without notice. Popcorn reserves the right to refuse to register inappropriate keywords and phrases.

Appropriate Format of Content Ideally photos must be supplied as the original or TIFF file. Text must be supplied as a Word document on disc or email and logos/icons supplied as Illustrator, EPS files or original. Alternatively a PDF file can be used for any/all of the above. Any work required in amending client submitted text or images for use on web sites are chargeable.

Maintenance Timescales Updates within existing page designs and structures will be completed within 1 working day where content has been provided in an appropriate format. Popcorn cannot guarantee to update web sites where less than 1 working day's notice has been provided. Timescales for maintenance or development work that requires the restructuring of page or site designs or structures will be estimated once Popcorn has been provided with sufficient information and content to reasonably do so. Where Popcorn staff are required to work outside normal office hours to complete urgent maintenance or development, or are required to reschedule other work to be undertaken outside normal office hours to accommodate urgent maintenance or development, this work will be rated at time and a half or double time accordingly.

Fees & Payment. Fees will be invoiced in advance on a quarterly basis. Work over the agreed Web Works package will be invoiced monthly or quarterly in arrears depending on usage. Popcorn cannot offer a reduction in fees for non-use of services offered within the package.

Termination & Right to Cancellation. Each party agrees to a minimum tenure of twelve (12) months from the date of this Agreement. At the end of that period either party has the right to cancel this Agreement. If payment for the service is not received within the agreed credit terms, Popcorn reserves the right to terminate the agreement with one week's written notice.

14. Server Co-Location Services

The following items are additional terms and conditions for Popcorn's Server Co-Location Services and only apply to customers who have signed up to this service.

Sole Agreement If any acknowledgment, provisions, term or condition in any Customer purchase order, voucher or other memorandum is in any way inconsistent with, or adds to, the provisions of the Agreement, such provisions shall not affect the interpretation or terms of this Agreement, and any such inconsistent or additional provisions, terms and conditions are agreed by the parties to be null and void. No modifications of this Agreement or waiver of any of its terms will be effective unless set forth in a written document signed by authorised agents of Customer and Popcorn.

Services Subject to compliance by the Customer with its obligations under this Agreement, Popcorn Web Design Ltd shall provide the Services to the Customer during the currency of this Agreement.

Term This Agreement shall subsist for the Initial Term of 12 months and then for subsequent periods of three months until terminated by no less than thirty (30) days notice in writing by either party to the other.

Compliance with Law and Policy The Customer shall ensure that nothing is transmitted by or on behalf of the Customer or using the Customer's equipment through the Service or down-loaded in violation of any UK or international law, regulation or treaty or Popcorn Web Design's Rules or in breach of the intellectual property rights of



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any person. The Customer shall fully and effectually indemnify Popcorn Web Design Ltd from and against all loss, liability, damages, costs and expenses which Popcorn Web Design Ltd may incur in relation to any breach by the Customer of its obligations under this Clause. A breach of this clause will also be grounds for Popcorn Web Design Ltd to terminate this Agreement with immediate effect, at Popcorn Web Design's discretion.

Offending Material Without prejudice to any other right, Popcorn Web Design Ltd shall be entitled to disable the Service or any part of it or to take such action as it may in its discretion think appropriate to ensure that any material which Popcorn Web Design Ltd in its discretion considers to offend the principles set out in Clause 5.A is not capable of being transmitted or down-loaded. Popcorn Web Design Ltd shall not however be obligated to take, or consider whether it should take, any such action.

International Bandwidth The Customer acknowledges that Popcorn Web Design Ltd has no direct control over the availability of bandwidth over the entirety of the Internet and that while it will use such endeavours as Popcorn Web Design Ltd, in its absolute discretion deems appropriate to facilitate the Service at all times, Popcorn Web Design Ltd shall not be responsible for delays caused by overuse of or lack of such bandwidth.

Indemnity The Customer acknowledges that, by the nature of the Service being provided, information and material downloaded or used by the Customer may be kept, whether permanently or temporarily on Popcorn Web Design's equipment. The Customer shall at all times ensure that such information and material complies with the laws of all applicable jurisdictions and shall keep Popcorn Web Design Ltd fully and effectually indemnified from and against all costs, claims, liabilities and demands relating to or arising from any breach by the Customer of this clause or any criminal or civil legal action brought against Popcorn Web Design Ltd as a result of Popcorn Web Design's storage of such information or material.

Domain Names Popcorn Web Design Ltd has no control over the availability of domain names and accordingly accepts no responsibility for the availability of any domain name. If any domain name is or becomes unavailable or on a request from any domain name registration authority, the Customer shall take all steps to relinquish the relevant domain name or otherwise to abide by the order of such authority and Popcorn Web Design Ltd shall be entitled to take all appropriate steps to achieve the same.

Domain name transfers.

An admin charge of £20 per domain name is chargeable for transfer to another hosting company.

Historical Archive and Backup

While Popcorn Web Design Ltd backs up its server computers as a regular part of its internal systems administration, Popcorn Web Design Ltd does not guarantee any storage or backup of Customer data.

Termination for Non-payment. If any Popcorn Web Design Ltd invoice remains unpaid fourteen (14) days after its due date, Popcorn Web Design Ltd may without further notification or prejudice to any other remedy, suspend or disable the Service or, at its option, terminate this Agreement. Termination for non-payment shall not relieve the Customer of its responsibilities under this Agreement, including the responsibility to pay all fees up to the date of termination.

Popcorn Web Design Ltd may terminate this Agreement at any time if the Customer materially breaches this Agreement and in the case of a breach capable of remedy fails to remedy the breach within fourteen (14) days of a notice from Popcorn Web Design Ltd requiring the breach to be remedied.

Upgrades and Equipment Maintenance From time to time Popcorn Web Design Ltd may upgrade its servers and associate network infrastructure. This may require the Customer to upgrade its software applications or equipment if the Service is to be continued. In that event, the Customer agrees to make within fourteen (14) days such reasonable upgrades to its hardware or software as Popcorn Web Design's technical staff may from time to time reasonably specify by written notice to the Customer. Popcorn Web Design Ltd shall not be responsible for degradation of or disruption to the Service if the Customer does not make the upgrade required.

Scheduled and emergency work will require that the Customer's web site is temporarily suspended. Popcorn will as far as possible conduct this at an appropriate time with the customer as to minimise disruption.

Limited Warranty

Popcorn Web Design Ltd warrants that the Service will not be substantially different from any written description of the Service previously supplied by Popcorn Web Design Ltd to the Customer.

The Customer is responsible for assessing its own commercial needs, how the Service relates to the Customer and how the Customer should use the Service. The Customer warrants that it is familiar with services of this type and that it understands the level of service to be provided and the implications for the Customer's own business of the choices which the Customer made in completing the Order Form. Popcorn Web Design Ltd makes no warranty as to the value of the Service in the Customer's business or the results to be obtained from the use of the Services.

The Customer is solely responsible for the use of any information or other material obtained through the Service. Popcorn Web Design Ltd specifically excludes any responsibility for the accuracy or quality of information obtained through the Service, or that any other material obtained through the Service may be used in any way by the Customer without infringing the rights of any third parties. The Customer further acknowledges that these matters are outside the control of Popcorn Web Design Ltd.

Limitation of Liability. Without prejudice to the express warranties contained in the clauses listed above and to the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or otherwise by general law into this Agreement or relating to the Services are hereby excluded.

The following provisions in this clause set out Popcorn Web Design Ltd's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:-



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- a) A breach of Popcorn Web Design Ltd's contractual obligations;
- b) A tortious act or omission for which Popcorn Web Design Ltd is liable;
- c) an action arising out of a misrepresentation by or on behalf of Popcorn Web Design Ltd; arising in connection with the performance or contemplated performance of this Agreement or out of an act done or omission made as a consequence of the entry into by Popcorn Web Design Ltd of this Agreement.

The Customer acknowledges that in circumstances where a fatal server failure could cause pure economic loss, loss of profit, loss of business or like loss then Popcorn advise a second backup server is installed. Popcorn Web Design Ltd shall in no circumstances be liable to the Customer for any pure economic loss, loss of profit, loss of business or like loss.

Popcorn Web Design Ltd shall in no circumstances (whether before or after termination of this Agreement) be liable to the Customer for any loss of or corruption to data or programs held or used by or on behalf of the Customer. However Popcorn shall at all times keep adequate back-up copies of the data and programs held or used by or on behalf of the Customer.

The Customer shall only be entitled to bring a claim against Popcorn Web Design Ltd where the Customer issues legal proceedings against Popcorn Web Design Ltd within the period of twenty-four (24) months commencing on the date upon which the Customer ought to have known of its entitlement to bring such a claim. Notwithstanding anything to the contrary herein contained Popcorn Web Design Ltd's liability to the Customer for:-

- a) Death or personal injury resulting from the negligence of Popcorn Web Design Ltd, its employees, agents or sub-contractors.
- b) damage suffered by the Customer as a result of a breach by Popcorn Web Design Ltd of the condition as to title or the warranty as to quiet possession implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- d) damage for which Popcorn Web Design Ltd is liable to the Customer under Part I of the Consumer Protection Act 1987;

15. General Provisions

Sole Agreement If any acknowledgment, provisions, term or condition in any Customer purchase order, voucher or other memorandum is in any way inconsistent with, or adds to, the provisions of the Agreement, such provisions shall not affect the interpretation or terms of this Agreement, and any such inconsistent or additional provisions, terms and conditions are agreed by the parties to be null and void. No modifications of this Agreement or waiver of any of its terms will be effective unless set forth in a written document signed by authorised agents of Customer and Popcorn.

Severability If any term of this Agreement is held to be invalid, the remainder of this Agreement will remain in force. If any term of this Agreement shall be invalid, illegal or unenforceable, in whole or in part, the validity of any of the other terms of this Agreement shall not be affected thereby in any way so long as the general intent of this Agreement can still be carried out absent the invalid, illegal or unenforceable provision.

Choice of Laws This Agreement is governed by and shall be construed in accordance with English Law, and all questions regarding the validity, intention or meaning of this Agreement or any modifications of it will be construed and resolved under the laws and solely in the courts. Each party hereto hereby consents to the personal jurisdiction of the courts for such purposes.

Survival All obligations of the parties with respect to confidentiality of information shall survive the termination of this Agreement, regardless of the reason for such termination.

Notices All notices and requests in connection with this Agreement shall be in writing and may be given by personal delivery or registered mail with return receipt, telegram or other customary means of written communication. The effect date of any notice or request shall designate by notice to the other. The effective date of any notice or request shall be five (5) days from the date which it is sent by the party so sending the notice or immediately upon personal delivery.

Non-Cancellation of Orders Customer recognises and acknowledges that each component and design stage, as described in the Estimate / proposal, represents an integral part of the project, and that any change or alteration may significantly impair the ability of Popcorn to perform its obligations hereunder. Customer shall not cancel any portion of the project without securing the written permission of Popcorn. In the event that Customer and Popcorn desire to amend or modify any portion of the project, such amendment or modification shall be documented, and said documentation shall only become effective upon the written confirmation by an authorised representative of Popcorn and Customer.

16. General Terms

Assignment The Customer may not sell, transfer or assign its rights or obligations under this Agreement without Popcorn Web Design's written consent. No such assignment, even if consented to, shall relieve the Customer of its obligations under this Agreement prior to the date of the assignment.

Waiver The waiver or failure of Popcorn Web Design Ltd to exercise any right provided for in this Agreement shall not be deemed a waiver of that or any other right in this Agreement.

Invalidity If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.

Whole Agreement This Agreement represents the complete agreement and understanding of the parties as to its subject matter, and supersedes any other agreement or understanding, written or oral. If there is any conflict between the Estimate / proposal Documentation and the Popcorn Web Design Ltd Construction Agreement, the Construction Agreement (This document) shall take precedence. This Agreement may be modified only in writing signed by an authorised representative of the Customer and an authorised representative of Popcorn Web Design Ltd.

Notices Notices sent pursuant to this Agreement shall be in writing and may be delivered by hand, sent by post or faxed with hard copy confirmation by post to the recipient at its address as shown on the Order Form or at such other address as may be notified in accordance with this clause or, in the case of a company, to its registered office.



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Notices hand-delivered or faxed shall be deemed received on delivery and those posted on the second working day after they are posted.

Law. This Agreement shall be governed by English law. The parties submit to the non-exclusive jurisdiction of the English courts.

Capacity. Both parties acknowledge that they have read and understood this Agreement and agree to be bound by its terms.

Representations. The parties acknowledge that in entering into this Agreement they have not relied upon any representations other than those reduced to writing in this Agreement.

Force Majeure Any delay in or failure of performance of any obligation by either party (save an obligation in respect of the payment of monies) shall not constitute a breach of such obligation to the extent that such delay or failure is caused by an event (including without limitation an event such as a strike, lock-out or other industrial action or trade dispute occurring to the party taking advantage of this clause 17.J) outside the control of that party and which that party is not reasonably able to prevent or to circumvent ("an Event of a Force Majeure"). The party otherwise in default shall take all reasonable steps to circumvent and mitigate the effect of such event and to reduce any delay in the performance of such obligation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

Signed on behalf of Popcorn Web Design Ltd



Name Fintan Lambe

Printed Name

Title Managing Director

Official Title

Date _____

Date

Signed on behalf of _____

Your Company Name

By _____

Signature

Name _____

Printed Name

Title _____

Official Title

Date _____

Date

WE ARE MEMBERS OF



The Credit Protection Association

**PLEASE OBSERVE
OUR CREDIT TERMS!**

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