

Brilliant Digital Terms and Conditions

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CLIENT TERMS AND CONDITIONS

Agreed terms

1. Definitions and interpretation

The definitions and rules of interpretation in this clause apply in this Agreement.

Definitions In this Agreement: References to "us", "we" and "our" means Complete Website Solutions Pty Ltd Trading as Brilliant Digital ABN 13 611 329 072, and references to "you" and "your" means the person identified as the "Client" in the Proposal, or to whom the Proposal is addressed.

1.1 Definitions

Acceptable Use Policy means the acceptable use policy of our Hosting Provider, as updated, amended or replaced by the Hosting Provider from time to time. Our current Hosting Provider CloudLoop Pty Ltd (ABN: 26 662 088 682) and a copy of their Acceptable Use Policy is available at <https://cloudloop.com.au/terms/>

Agreement means the agreement formed by us and you for the development and maintenance of the New Website, consisting of:

- a) the Proposal; and
- b) these Client Terms and Conditions (including the Service Level Agreement).

Authorised User means a person nominated by you to act as your authorised user in respect of the Hosting Services.

Background IP means all Intellectual Property Rights incorporated in the Website Production Services and/or the Website and Digital Marketing Services, that were held by us prior to the date of this Agreement or developed by or for us independently of this Agreement or the Content Management System used to access the New Website.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales.

Commencement Date means the date agreed between us and you when the provision of Ongoing Website Services is to commence.

Content Management System means the online portal through which you and your Authorised Users may access the New Website in order to make changes to it, and which is available via the Internet at a location or locations specified by us from time to time.

Client Content means any document, file, information, data or other content that (a) you provide to us, or that we create for you based on such materials, for

inclusion in the New Website, or (b) that you use, transmit, upload or host in the course of using the Hosting Services.

Confidential Information means the terms and existence of this Agreement and all information belonging or relating to a party to this Agreement, whether oral, graphic, electronic, written or in any other form, that is: (a) or should reasonably be regarded as, confidential to the party to whom it belongs or relates; or (b) not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement.

Fees means the amounts payable by you for the Services as specified in the Proposal, as amended by us from time to time in accordance with this Agreement.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity

Hosting Provider means the third party that we engage to provide the Hosting Services.

Hosting Services means the provision of hosting and other services set out in clause 3 in respect of the New Website.

Intellectual Property Rights means all statutory and other proprietary rights (including rights to require information be kept confidential) in respect of knowhow, trade secrets, copyright, trademarks and service marks, business names and domain names, design, patent, semiconductor or circuit layout rights and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world..

New IP means all Intellectual Property Rights in the content for the New Website generated by us in the process of providing the Website Production Services or Website and Digital Marketing Services.

New Website means the website we produce for you.

Ongoing Website Services means the Website and Digital Marketing Services and/or the Hosting Services, as specified in the Proposal or otherwise agreed between us and you.

Payment Plan means a mutually agreed period where the cost associated with the New Website and Ongoing Website Services is spread across a pre-agreed term, not longer than 12 months.

Personal Information has the meaning given to that term in the Privacy Law.

Privacy Law means:

- a) the Privacy Act 1988 (Cth);
- b) any legislation from time to time in force in any:
 - (i) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (ii) non Australian jurisdiction (to the extent that you or we are subject to the laws of that jurisdiction), affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of data; and any legally binding ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder, as amended from time to time.

Process or Processing with respect to Personal Information, includes collecting, recording, organising, storing, adapting, altering, retrieving, consulting, using, disclosing, making available, combining, blocking, erasing and destroying.

Proposal means the proposal letter or 'website plan' to which these terms are attached.

Services means the Website Production Services and (if applicable) the Ongoing Website Services.

Service Levels Agreement means the service levels set out in Schedule 1, as updated, amended or replaced by us from time to time.

Third Party Client Content means Client Content authored by third parties which is incorporated into the Website;

Third Party Products means any third-party software products indicated as being included in the Services in the Proposal

Website and Digital Marketing Services means the ongoing SEO, digital advertising, social media strategy, blogging, video production and database marketing services we provide, as more particularly described in the Proposal.

Website Production Services means the design, strategy, content, programming and SEO optimisation services we provide, as more particularly described in the Proposal.

Website Production Timetable means the timetable for the provision of the Website Production Services, as set out in the Proposal.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

1.2 Interpretation In this Agreement, unless the context requires otherwise:

- (a) the headings are used for convenience only and do not affect the interpretation of this Agreement;

- (b) other grammatical forms of defined words or expressions have corresponding meanings;
- (c) a reference to a clause is a reference to a clause or subclause of this Agreement;
- (d) a reference to a party is to a party to this Agreement and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (e) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (f) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;
- (g) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (h) wherever "include", "for example" or any form of those words or similar expressions is used, it must be construed as if it were followed by "(without being limited to)";
- (i) money amounts are stated in Australian currency unless otherwise specified; and
- (j) a reference to time is to Sydney, NSW, Australia time.

2. Website Production Services

2.1 Provision of Website Production Services

- (a) We will provide you with the Website Production Services in accordance with the Website Production Timetable.
- (b) We will:
 - (i) use reasonable skill and care in providing the Website Production Services;
 - (ii) act in accordance with your reasonable directions while providing the Website Production Services;
 - (iii) establish and maintain clear channels of communication at all times with you, and promptly answer any questions asked by you.
- (c) If our agreement includes a Payment Plan, our Fees shall include a component for Ongoing Website Services for the duration of the Payment Plan. You cannot terminate this Agreement (including the Payment Plan or the Ongoing Website Services component) unless the final payment of our Fees is made in full in accordance with these terms.

3. Ongoing Website Services

3.1 Ongoing Website Services — monthly

- (a) If the provision of Ongoing Website Services forms part of the Agreement, we will provide you with the Ongoing Website Services on a month to month basis from the Commencement Date.
- (b) You may terminate this Agreement at the end of the by providing us with at least 15 days' written notice before the end of your billing cycle.

3.2 Provision of Website and Digital Marketing Services

- (a) We will:
 - (i) use reasonable skill and care in providing the Website and Digital Marketing Services;
 - (ii) act in accordance with your reasonable directions while providing the Website and Digital Marketing Services;
 - (iii) establish and maintain clear channels of communication at all times with you, and promptly answer any questions asked by you.

3.3 Provision of Hosting Services

- (a) You acknowledge that we subcontract the provision of the Hosting Services to our Hosting Provider. We will use our reasonable endeavours and highest level of care to provide the Hosting Services in accordance with the Service Level Agreement.
- (b) Subject to clause 3.3(d), where the Hosting Services is subject to any storage or volume limit, the right of use granted under clause 3.3(a) in respect of that Service applies up to that volume storage limit.
- (c) We:
 - (i) may monitor usage and activity of the Hosting Services and maintain user access logs;
 - (ii) may alter, enhance or remove some features of the Hosting Services at any time without notice, provided that such alteration, enhancement or removal does not materially reduce the performance or functionality of the New Website;
 - (iii) do not guarantee the availability or functionality of the Hosting Services and do not warrant that you will have continuous access to the Hosting Services. You acknowledge and agree that we will not be liable in the event that the Hosting Services are unavailable due to any reason whatsoever, including computer or server downtime, malfunctions, upgrades, preventative or remedial maintenance activities or interruption in telecommunications supply;

- (iv) do not guarantee the Services or the New Website will be free from Vulnerabilities or will comply with any particular cybersecurity requirements;
 - (v) do not guarantee the delivery of communications over the Internet, as such communications rely on third party service providers. Electronic communications (including electronic mail) are vulnerable to interception by third parties and we do not guarantee the security or confidentiality of such communications; and
 - (vi) make reasonable efforts to ensure the integrity of the Hosting Services, but we cannot guarantee the safety of computer systems of users of the New Website, or that any information or output of the New Website will be accurate, complete and error free or free from viruses, worms, trojan horses or other malicious code. We do not accept liability for any loss or corruption of data, content or information uploaded or communicated using the Hosting Services, or any damage to any computer system sustained in connection with the use of the Hosting Services. You acknowledge that you use the Hosting Services at your own risk.
- (d) You must comply with the [Acceptable Use Policy](#) and all applicable laws and all reasonable directions given by us regarding use of the Hosting Services, and ensure that your Authorised Users are notified of and comply with, the Acceptable Use Policy when accessing and using the Hosting Services.
- (e) You must not and must not allow any other person to:
- (i) infringe the Intellectual Property Rights of us or our licensors in respect of the whole or any component of the Hosting Services or otherwise, including, except as expressly permitted by non-excludable laws, copying, altering, modifying, tampering with, decompiling, reverse engineering or attempting to reverse engineer the Hosting Services;
 - (ii) data mine or use robots or other data collection methods in connection with the Hosting Services;
 - (iii) misuse the Hosting Services or the New Website or use the Hosting Services to upload, link to, or otherwise communicate or distribute any:
 - (A) inappropriate, profane, defamatory, infringing, obscene, indecent, misleading, deceptive or unlawful material or information, or otherwise use the Ongoing Website Services in a manner which is unlawful or would infringe the rights of another person including, any Intellectual Property Rights or in a manner which is in breach of the Acceptable Use Policy;or

- (B) any data, information, material or item which contains a virus, worm, trojan horse, malicious or harmful code or other disruptive component.
- (f) You acknowledge and agree that you are responsible for all acts and omissions of each Authorised User as if they were your acts or omissions.
- (g) Despite any other provision of this Agreement, we are not required to store and may permanently delete any Client Content which has been uploaded in breach of clause 3.3(e).
- (h) In the event we are obligated to (re)produce, access and/or disclose content in our care, custody or control on your behalf or at your request, you will be responsible for reimbursing us for reasonable reproduction costs and professional services time at the then published professional services rate.

3.4 Provision of Third-Party Products

- (a) Any Third-Party Products shall be supplied in accordance with the relevant licensor's standard terms. The one-off licence fee for such Third-Party Products is included in the Fees payable pursuant to clause 5. Third party products are non-refundable and refunds cannot be provided once the product has been activated on an account.

4. **Customer responsibilities and Updating the New Website**

4.1 Customer responsibilities

- (a) You acknowledge that our ability to provide the Services is dependent upon your full and timely co-operation, which you agree to provide, as well as the accuracy and completeness of any information and data you provide to us. Accordingly, in addition to any other obligations expressed in this Agreement, you shall:
 - (i) provide us with access to, and use of, all information, data, logos, designs, graphic and related materials, and documentation we reasonably require for the performance by us of our obligations under this Agreement; and
 - (ii) appoint a point of contact to the necessary expertise and authority to commit you, in order to provide your input and feedback on the project and provide prompt instructions to us.
- (b) You are responsible for the accuracy and completeness of the Client Content on the Site in accordance with clause 6(e).

4.2 Updating the New Website

- (a) You and your Authorised Users may access the New Website via the Portal in order to make changes to the content.

- (b) You are responsible for:
 - (i) obtaining all necessary permission, authorisations, licences and consents in relation to the use and incorporation of Third-Party Client Content into the New Website; and
 - (ii) payment of all royalties or licence fees associated with the use of a third party's Intellectual Property Rights in connection with the New Website, to the extent those items are not specifically included in the Proposal.

4.3 Login IDs and passwords

- (a) We will issue you with login IDs and passwords for the Portal for each Authorised User.
- (b) You are responsible for maintaining the confidentiality of the Login Information and must notify us immediately if you believe any of your Login Information has been compromised, lost or misplaced. You must ensure that no person within your influence or control other than an Authorised User accesses or uses any part of the Hosting Services using your Login Information. You accept all liability if your Login Information is used by an unauthorised person and indemnify us, our directors, officers, employees, agents and suppliers (including the Hosting Provider) from all claims, losses, damages, costs (including any legal costs), expenses and liabilities reasonably incurred or suffered in connection with your wilful, unlawful or negligent act or omission in breach of this clause 4.

4.4 Support

- (a) You must notify us and provide us details of any technical difficulties, problems or faults ("**Incident**") with the Ongoing Website Services. If the Incident was or is being caused by an issue with the Ongoing Website Services, we will use reasonable endeavours to resolve it within a reasonable period of time.
- (b) We are not responsible for resolving any Incidents that are caused by your personnel or issues with the Client Content, or which arise out of issues with your computer systems, network infrastructure, or any telecommunications networks.

4.5 Delays

- (a) We shall not be responsible for any delay or any deficiency in the Services which is caused by factors beyond our reasonable control, including but not limited to telecommunications failure or fault, defective resources supplied or utilised by you, or any deficiency in the practices or procedures employed by you or your employees or agents in connection with this Agreement, including any failure by you to maintain and enforce an appropriate and effective security policy.

5. Fees and payment

- (a) We will issue you with a tax invoice for the Fees together with any other amounts payable under this Agreement at the intervals set out in the Proposal under 'Payment Terms'. This includes a percentage of Fees payable on signing of the Agreement.
- (b) All amounts payable to us under this Agreement will be collected by direct debit via our third-party service provider within one week of an invoice being issued.
- (c) We may increase the Fees from time to time to reflect increases in our cost of supplying the Services and such increases will take effect immediately upon written notification to you.
- (d) All amounts are exclusive of GST unless stated otherwise. We will issue tax invoices in respect of amounts due and you must pay all GST payable in respect of any taxable supplies made to you in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and all associated regulations.
- (e) Should amounts payable not be received as due we reserve the right to suspend or terminate Hosting Services or other Services.
- (f) If our agreement includes a Payment Plan and payment is not received as due, the full amount of the entire term is payable immediately. All New IP does not become your property until the final payment of our Fees is made in full in accordance with these terms.

6. Intellectual property

- (a) You acknowledge that we shall retain ownership of all of our Background IP. We grant the client a non-exclusive, perpetual, non-transferable, royalty free and worldwide licence to use, for the purposes of your day to day business, our Background IP to the extent that it is contained within the Website Production Services and Website and Digital Marketing Services.
- (b) Subject to you having paid all Fees, all New IP shall vest in and be owned absolutely by you.
- (c) You shall ensure that any Client Content does not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) ("**Inappropriate Content**").
- (d) You acknowledge that we have no control over any content placed on the New Website by visitors and do not purport to monitor the content of the New Website. We reserve the right to remove content from the New

Website where it reasonably suspects such content is Inappropriate Content. We shall notify you promptly if we become aware of any allegation that any content on the Site may be Inappropriate Content.

- (e) You indemnify us, our directors, officers, employees, agents and suppliers (including the Hosting Provider) from all claims, losses, damages, costs (including any legal costs), expenses and liabilities reasonably incurred or suffered in connection with any claim by any third party that the Client Content infringes their Intellectual Property Rights or other rights, or arising as a result of any action or claim that Client Content constitutes Inappropriate Content.

7. **Privacy**

- (a) You are solely responsible for ensuring that you comply with your obligations under the Privacy Law, including when processing any Personal Information using any Services.
- (b) You must:
 - (i) not Process or otherwise do or omit to do anything in relation to Personal Information that would cause us to contravene any Privacy Law;
 - (ii) cooperate with us to resolve any complaint or inquiry made under any Privacy Law, or in relation to any request for access to Personal Information;
 - (iii) immediately notify us after becoming aware that any Client Content stored by us has been subject to misuse, interference, or loss, or unauthorised access, use, modification, processing, disclosure or other misuse; and
 - (iv) notify us immediately if you become aware of any breach or potential breach of your obligations under this clause 7, provide any details in relation to the failure that we request, and without limiting our rights under this Agreement, immediately comply with our reasonable directions with respect to remedying that breach.
- (c) You warrant and represent that any Personal Information collected by or disclosed to you, which is or which forms part of the Client Content and which is disclosed to or used by us, has been Processed by you and disclosed to us in accordance with the Privacy Law.
- (d) You acknowledge that you control the accuracy of the Client Content and any Personal Information which is or forms part of the Client Content.
- (e) You acknowledge that we may collect Personal Information about your employees, agents, consultants or subcontractors whilst providing the Services. We will take reasonable steps to comply with the Privacy Law when collecting, using, or disclosing such Personal Information.

- (f) We will deal with your Personal Information as directed by you, provided that the directions will not cause us to breach the Privacy Law and that, if such directions involve additional or different services, the provision or use of such services must be agreed by the parties and may be subject to the payment of additional Fees.
- (g) If either party knows or suspects any facts or circumstances that suggest unauthorised access breach or compromise of personal information held by that party, it shall promptly notify the other party
- (h) If either party is the subject of an investigation, review, enforceable undertaking, order or other enforcement action (“**Enforcement Action**”) by a Government Agency the other party must comply at its own expense with any reasonable request for access to information to assist with the first party's compliance with the Enforcement Action to the extent required by law.

8. Confidentiality

- (a) Each party (Receiving Party) receiving, possessing or otherwise acquiring Confidential Information of any other party (Disclosing Party) acknowledges that the Disclosing Party's Confidential Information is the property of and confidential to or a trade secret of the Disclosing Party. Subject to clause 8(b), the Receiving Party must:
 - (i) keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
 - (ii) take all reasonable steps to secure and keep secure all Disclosing Party's Confidential Information coming into its possession or control; and
 - (iii) not deliberately memorise, use, modify, reverse engineer or make copies, notes or records of the Disclosing Party's Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement.
- (b) The obligations of confidentiality under clause 8(a) do not apply to any information that:
 - (i) is generally available to the public (other than by reason of a breach of this Agreement); or
 - (ii) is required to be disclosed by any applicable law, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

9. Liability

- (a) Subject to clause 9(c) and the Service Level Agreement, any representation, warranty, condition, guarantee, indemnity or undertaking that would be implied in, or affect, this Agreement by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage is excluded to the maximum extent permitted by law.
- (b) Subject to clause 9(c) and the Service Level Agreement and to the maximum extent permitted by law, our maximum aggregate liability to you for all losses, damages, expenses and claims arising out of, or in connection with this Agreement or the supply of all Services, whether arising in or under contract, statute, tort (including negligence), equity or otherwise at law, is limited to the amount paid by you in respect of the Services.
- (c) Under no circumstances whatsoever, including our negligence, will we be liable in respect of any indirect or consequential loss or damage or for any loss of actual or anticipated profit, loss of revenue, loss of contracts, loss of business, loss of opportunity, loss of goodwill, loss of opportunity or loss of damage to or corruption of data or Client Content, irrespective of whether you previously notified us of the possibility of such loss or damage.
- (d) Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on you by the Australian Consumer Law contained in Schedule 2 to the Competition and Consumer Act 2010 (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement. To the fullest extent permitted by law, our liability for a breach of a non-excludable guarantee referred to above is limited, at our option, to:
 - (i) the supplying the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

10. Termination and suspension

- (a) Either party may immediately terminate this Agreement by written notice if the other party:
 - (i) becomes insolvent or enters into liquidation, receivership or other insolvency administration or makes a composition or arrangement with its creditors generally or takes advantage of any statute for the relief of insolvent debtors;
 - (ii) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;

- (iii) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (including the business of a partnership); or
 - (iv) breaches this Agreement and the breach is incapable of remedy, or otherwise fails to remedy within 14 days of receiving notice requiring it to do so.
- (b) We may immediately suspend or limit or immediately terminate all or part of the Services or this Agreement by written notice to you writing if you breach clause 3.3(e)(iii) or the Acceptable Use Policy.
 - (c) We may immediately terminate this Agreement by written notice if the termination of any arrangement with a third-party supplier (including our Hosting Provider) which is fundamental to our ability to provide the Services renders it impossible for us to continue to supply the Services.

11. **Transition out**

- (a) If this Agreement expires or is terminated for any reason other than under clause 10(b) then we will retain the Client Content and make it available for you to extract for a period of 30 days from the date of such expiry or termination of this Agreement. If this Agreement is terminated under clause 10(b), we may permanently delete the Client Content at any time after we provide you with notice of such termination.
- (b) If requested and subject to your payment of our then current professional services fees, we will provide you with a copy of the Client Content or with reasonable assistance in extracting the Client Content. If we do so, then you acknowledge and agree that:
 - (i) we will not be responsible for cleansing any transferred data or for rectifying any data errors or corruption to the transferred data, or for any failure of that data to comply with any required format; and
 - (ii) you acknowledge and agree that you will be solely responsible for ensuring that all transferred Client Content has been correctly transferred without error, corruption or omission.

12. **Force majeure**

- (a) Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control (including any industrial dispute affecting any third party, pandemic, governmental regulations, fire, flood, disaster, civil riot or war). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for sixty

(60) days, the party not affected may terminate this Agreement by giving fourteen days' written notice to the affected party.

13. **General**

- (a) The documents comprising this Agreement are to be interpreted in the following order of prevalence to the extent of any inconsistency between them:
 - (i) the Proposal;
 - (ii) these Client Terms and Conditions (including the Service Level Agreement); and
 - (iii) the Acceptable Use Policy.
- (b) We may include the statement "Designed by Brilliant Digital" on the homepage of the New Website in a form to be agreed.
- (c) This Agreement is the entire agreement between the parties in relation to its subject matter. This Agreement cannot be varied except by written agreement between the parties executed by an authorised officer of ours and an authorised representative of you. You must not assign this Agreement or any of your rights or obligations under it without our prior written consent.
- (d) This Agreement will be governed by, and construed in accordance with, the laws of the State of New South Wales, and the parties submit to the exclusive jurisdiction of the courts of that State.
- (e) Clauses 1, 5,6,, 7,8,9,11, this clause 12 and any other clauses which by their nature survive expiry or termination of this Agreement will survive expiry or termination of this Agreement.
- (f) The provisions of this Agreement and the rights and liabilities conferred under it are distinct and severable and any invalidity will not affect another term, condition, liability or right. A party may only waive its rights under this Agreement by a clear statement in writing and any failure by a party to exercise a right or insist on strict performance of any obligation under this Agreement shall not constitute a waiver.
- (g) If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

Schedule 1 Service Level Agreement - NETWORK UPTIME GUARANTEE

- 1.1 **Uptime Guarantee** - We understand the need for businesses to have their hosted content online at all times. With that in mind, we provide a 99.99% network uptime guarantee for all hosted services, subject to the exceptions set out below.
- 1.2 As not all events are within our control and some events are caused by planned or necessary actions by our Hosting Provider, the following exemptions apply to this Service Level Agreement.
- 1.3 We shall have no liability to you if an outage arises directly or indirectly from
- (a) Scheduled or urgent maintenance to the service, or to infrastructure used to access the service, being carried out by the Hosting Provider.
 - (b) The Hosting Provider acting on recommendations from third parties such as emergency services.
 - (c) Your actions or issues arising from applications installed by you or by the Hosting Provider or by us upon your request.
 - (d) A breach of this Agreement or of the Acceptable Use Policy.
 - (e) Failure that occurs to equipment or networks outside of our or the Hosting Provider's control.

Whilst our Hosting Provider takes all reasonable steps to monitor and maintain the quality and functionality of the hardware it provides, from time to time hardware failures will occur. Neither we nor our Hosting Provider are responsible for restoring data to a server and is not liable for any data loss experienced due to the hardware failure and subsequent replacement and data restoration process, nor are we or our Hosting Provider liable for any loss of business or costs incurred to a business as a result of the hardware failure, downtime during replacement and data restoration, or any data loss experienced.