

Kualo Limited Terms and Conditions



1. Definitions

1.1 In these Terms and Conditions, except to the extent expressly provided otherwise:

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Annex" means any annex to a Schedule;

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"Charges" means the following amounts:

- a) the amounts specified in the Order or otherwise agreed in writing;
- b) such amounts as may be agreed in writing by the parties from time to time; and
- c) amounts calculated by multiplying the Provider's standard time-based charging rates (as notified by the Provider to the Customer before the date of the Contract) by the time spent by the Provider's personnel performing the Services (rounded down by the Provider to the nearest quarter hour);

"Client" means a client of the Customer;

"Client Area" means the administrative control panel available at <https://my.kualo.com> from where the Customer can manage their account with the Provider;

"Confidential Information" means the Provider Confidential Information and the Customer Confidential Information;

"Contract" means a contract made under these Terms and Conditions between the Provider and the Customer;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Customer" means you, the individual or entity, entering into this Contract by placing an Order for Services with the Provider;

"Customer Confidential Information" means:

- a) any information disclosed by or on behalf of the Customer to the Provider at any time before the termination of the Contract (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Provider (acting reasonably) to be confidential; and
- b) the terms of the Contract;

"Customer Indemnity Event" has the meaning given to it in Clause 15.1;

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Contract, but excluding any data with respect to which the Provider is a data controller;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

"Data Transfer" means the data transferred from and/or to the Provider's Servers;

"Domain Auto Renewal" means the automatic renewal of a domain name in advance of expiration, as controlled by the Customer in the Provider's Client Area;

"Domain Name Services" means the registration of domain names and the maintenance of domain name registrations by the Provider on behalf of the Customer;

"Effective Date" means the date the Order is placed or the date Charges for Services are paid (whichever occurs first);

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Data" means all data, works and materials: uploaded to or stored on the Hosting Platform by the Customer, or by any third party using any software made available by means of the Hosting Platform; transmitted by the Hosting Platform at the instigation of the Customer, or at the instigation of any third party using any software made available by means of the Hosting Platform; or supplied by the Customer to the Provider for uploading to, transmission by or storage on the Hosting Platform;

"Hosting Account" means an online account enabling a person to configure and manage the Hosting Services;

"Hosting Platform" means the platform managed by the Provider and used by the Provider to provide the Hosting Services, including the application, database, system and server software used to provide the Hosting Services, and the computer hardware on which that application, database, system and server software is installed or operates on;

"Hosting Services" means those hosting services specified in the Customer's Order which will be made available by the Provider to the Customer as a service via the internet in accordance with these Terms and Conditions;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintained Software" means software that the Provider runs on the Server(s) used within the Hosting Platform to provision the Customer's Services;

"Maintenance Services" means the supply to the Customer of Updates and Upgrades;

"Minimum Term" means, in respect of the Contract, the period specified in the order confirmation email sent from the Provider to the Customer, other written communication from the Provider to the Customer, or where unspecified: 1 month.

"Network" means telecommunication hardware installed and operated by the Provider which is used to facilitate the transfer of data from or between the Hosting Platform and the internet;

"Order" means an online or offline request by the Customer for Services provided by the Provider, the specifications of which may be amended from time to time by the Customer via the Client Area, or upon written request;

"Personal Data" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

"Provider" means Kualo Limited, a company incorporated in England and Wales (registration number 04004280) having its registered office at 20-22 Wenlock Road, London, N1 7GU, United Kingdom;

"Provider Confidential Information" means any information disclosed by or on behalf of the Provider to the Customer at any time before the termination of the Contract (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential.

"Reseller Hosting Service" means Hosting Accounts served from our reseller Hosting Platform which the Provider authorised for reselling purposes subject to Clause 11 "Right to re-sale or sub-license";

"Schedule" means any schedule attached to the main body of these Terms and Conditions;

"Server" means any hardware providing computing processing power, memory and/or storage operated by the Provider for the purpose of performing the Services;

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

"Shared Hosting Service" means a Hosting Account served from our shared web Hosting Platform;

"SSL Certificate Services" means the purchase of SSL certificates, the installation of SSL certificates and the maintenance of SSL certificates by the Provider on behalf of the Customer;

"Support Services" means support provided by the Supplier in relation to use of the Services and/or the identification and resolution of errors in the Services; for the avoidance of doubt, support services shall not include the provision of training services, changes to the layout or design of any hosted website, or any software development or programming services;

"Term" means the term of the Contract, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2;

"Terms and Conditions" means all the documentation containing the provisions of the Contract, namely the main body of these Terms and Conditions, the Schedules, the Annexes and the Order details, including any amendments to that documentation from time to time;

"Update" means a hotfix, patch or minor version update to the Maintained Software;

"Upgrade" means a major version upgrade of the Maintained Software; and

"VPS Hosting Services" means a virtualised server providing the Customer with Services.

2. Eligibility

- 2.1 The Provider expressly prohibits the use of the Services by anyone under the age of 13, and by placing an Order, the Customer warrants to the Provider that they are at least 13 years of age.

3. Term

- 3.1 The Contract shall come into force upon the Effective Date.
- 3.2 The Contract shall continue in force indefinitely, subject to termination in accordance with Clause 18 or any other provision of these Terms and Conditions.
- 3.3 Unless the parties expressly agree otherwise in writing, each Order shall create a distinct contract under these Terms and Conditions.

4. Services

- 4.1 By placing an Order with the Provider, the Customer agrees that these Terms and Conditions shall apply to those Services, and that these Terms and Conditions shall constitute a binding Contract between the Provider and the Customer when the Provider emails the Customer to confirm acceptance of its Order.
- 4.2 The Provider shall devote such of its personnel's time and expertise to the performance of the Services as may be necessary for their satisfactory deployment and ongoing operation.
- 4.3 The Provider shall endeavour to comply with all reasonable internal policies and procedures operated by the Customer, communicated by the Customer to the Provider and affecting the provision of the Services.
- 4.4 The Provider may suspend the provision of any or all of the Services if any amount due to be paid by the Customer to the Provider under the Contract is overdue, and the Provider has given to the Customer at least 7 days' written notice, following the amount becoming overdue, of its intention to do so.
- 4.5 The Provider may amend any or all of the Service particulars, providing the Provider has given to the Customer at least 30 days' written notice.
- 4.6 Where a Service includes the provision of connectivity to the Internet or access to a Server, the Customer shall not be entitled to such Service until the Provider notifies them that it is ready for use.

5. Delays

- 5.1 The Provider will endeavour to adhere to any timetable or dates which the Provider has given to the Customer, but any such timetable or dates are provided as estimates only, and the Provider will not be liable for any delay or failure to perform in accordance with that timetable or those dates.
- 5.2 Despite anything else contained in these Terms and Conditions, neither party will be liable for any delay or failure in performing its obligations under these Terms and Conditions (except an obligation to make payment) if that delay or failure is caused by circumstances beyond its control (including, without limitation, any delay caused by an act or omission of the other party or any third party), and the party so delaying will be entitled to a reasonable extension of time for the performance of its obligations.

6. Customer obligations

- 6.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:
- a) co-operation, support and advice;
 - b) information and documentation; and
 - c) governmental, legal and regulatory licences, consents and permits,
- as are reasonably necessary to enable the Provider to perform its obligations under the Contract.
- 6.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks, systems or remote hosting account(s) as may be reasonably required by the Provider to enable the Provider to perform its obligations under the Contract.
- 6.3 Save as expressly provided in these Terms and Conditions, the Customer shall be responsible for obtaining and where relevant paying for any licences of third party software that may be required for the use of the Services.
- 6.4 The Customer shall be responsible for ensuring that its passwords relating to the Services are securely constructed, are kept securely and not disclosed to any unauthorised person; and the Customer must notify the Provider as soon as practicable if the Customer becomes aware that any password relating to the Services has been or may have been compromised or misused.
- 6.5 The Customer will comply with the terms and conditions imposed by any third party or subcontractor in connection with the provision of the Services to the Customer by the Provider.

7. Charges

- 7.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.
- 7.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 7.2.
- 7.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 7.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation.

8. Payments

- 8.1 The Provider shall issue invoices for the Charges to the Customer from time to time during the Term.
- 8.2 Full payment is required before any Services are rendered by the Provider, including renewals.
- 8.3 The Customer must pay the Charges to the Provider within the period of 15 days following the issue of an invoice in accordance with this Clause 8.
- 8.4 The Customer must pay the Charges by debit card, credit card or bank transfer (using such payment details as are notified by the Provider to the Customer from time to time).
- 8.5 If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may:
 - a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.6 When entering into a contract as a consumer (not in the course of conducting business) the Customer agrees to the Provider commencing supply of the Services before the fourteen working days cooling off period has expired. Notwithstanding any other rights of termination outlined in this Contract, the Customer agrees to waive its right to cancel the Contract under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

9. Reversion of assignments and licences

- 9.1 Notwithstanding any other provision of these Terms and Conditions, the licences and assignments granted by the Provider to the Customer under these Terms and Conditions are subject to the payment by the Customer of all amounts owing to the Provider under the Contract in full and on time.
- 9.2 If the Customer owes any amount to the Provider under the Contract and fails to pay that amount to the Provider within 30 days following the receipt of a notice requiring it to do so and specifying that the assignments will revert and the licences will terminate if the amount remains unpaid, then the Provider may immediately revert the assignments and terminate the licences granted by the Provider under these Terms and Conditions by giving written notice of reversion and termination to the Customer.

10. Software licenses and rights

- 10.1 During the term of these Terms and Conditions, the Provider may provide the Customer with the use of certain Software. In such a case, the Customer agrees that:
 - a) Such Software is provided on a non-transferable, non-exclusive, non-proprietary basis and is provided to the Customer solely for use on the Hosting Platform and in conjunction with the Hosting Services;
 - b) It will not copy the software, except as necessary for installation on the Hosting Platform and for internal, archive purposes; reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from the Software; sell, lease, transfer, give or sublicense the Software,

write or develop any derivative or other software program(s) based, in whole or in part, upon the Software provisioned by the Provider.

11. Right to re-sale or sub-license

- 11.1 The Customer agrees that unless otherwise agreed in writing with the Provider, the right to resell or sub-license the Provider's Hosting Services, for profit or otherwise, is prohibited on shared Hosting Services, excluding Hosting Services specifically designated as "Reseller Hosting" on the Provider's website.
- 11.2 In order to resell Hosting Services to the Customer's Clients, the Customer acknowledges and agrees that those Clients are the responsibility of the Customer.
- 11.3 The Customer agrees to ensure that each of its Clients to whom it resells the Provider's Hosting Services is also entered into a binding agreement with the Customer, which must contain provisions consistent with these Terms and Conditions, and subjects that Client to the same legal obligations.
- 11.4 The Customer agrees to handle all matters relating to technical support for its Clients itself, without referring those Clients to the Provider for this purpose.
- 11.5 The Customer agrees to pass on to its Clients, in its own name, any announcements that the Provider posts via its announcement system that it requests be forwarded.
- 11.6 The Customer agrees to fully indemnify and keep the Provider fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by the Customer or its Clients and arising from:
 - a) The use or misuse of the Resources by the Customer or its Clients; and
 - b) Any claim brought against the Provider by any third party alleging that its Intellectual Property Rights are infringed by the Customer's or its Clients' use of the Hosting Service.

12. Confidentiality obligations

- 12.1 The Provider must:
 - a) keep the Customer Confidential Information strictly confidential;
 - b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in these Terms and Conditions;
 - c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
 - d) act in good faith at all times in relation to the Customer Confidential Information; and
 - e) not use any of the Customer Confidential Information for any purpose other than to fulfil the obligation of these Terms and Conditions.
- 12.2 The Customer must:
 - a) keep the Provider Confidential Information strictly confidential;

- b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in these Terms and Conditions;
 - c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;
 - d) act in good faith at all times in relation to the Provider Confidential Information; and
 - e) not use any of the Provider Confidential Information for any purpose other than to fulfil the obligation of these Terms and Conditions.
- 12.3 Notwithstanding Clauses 12.1 and 12.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to the Contract and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.
- 12.4 No obligations are imposed by this Clause 12 with respect to a party's Confidential Information if that Confidential Information:
- a) is known to the other party before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
 - b) is or becomes publicly known through no act or default of the other party; or
 - c) is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.
- 12.5 The restrictions in this Clause 12 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.
- 12.6 Upon the termination of the Contract, each party must immediately cease to use the other party's Confidential Information.
- 12.7 Following the termination of the Contract, and within 5 Business Days following the date of receipt of a written request from the other party, the relevant party must destroy or return to the other party (at the other party's option) all media containing the other party's Confidential Information, and must irrevocably delete the other party's Confidential Information from its computer systems.
- 12.8 The provisions of this Clause 12 shall continue in force indefinitely following the termination of the Contract.

13. Data protection

- 13.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.
- 13.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Contract.

- 13.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Contract, the Personal Data of data subjects falling within the categories specified in Paragraph 1 of Schedule 5 (Data processing information) and of the types specified in Paragraph 2 of Schedule 5 (Data processing information); and the Provider shall only process the Customer Personal Data for the purposes specified in Paragraph 3 of Schedule 5 (Data processing information).
- 13.4 The Provider shall only process the Customer Personal Data during the Term and for not more than 90 days following the end of the Term, subject to the other provisions of this Clause 13.
- 13.5 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the European Economic Area), as set out in these Terms and Conditions or any other document agreed by the parties in writing.
- 13.6 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 13.7 Notwithstanding any other provision of these Terms and Conditions, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information.
- 13.8 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 13.9 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Paragraph 4 of Schedule 5 (Data processing information); the Customer agrees that it is its responsibility to make use of those technical measures made available to it by the Supplier to ensure the security of the Customer Personal Data.
- 13.10 As at the Effective Date, the Provider is hereby authorised by the Customer to engage as sub-processors the parties identified in Paragraph 5 of Schedule 5 (Data processing information) with respect to the Personal Data of the Customer and of third parties within the categories identified in Paragraph 1 of Schedule 5 (Data processing information).
- 13.11 The Provider shall not engage any third party to process the Customer's Personal Data without providing the Customer notice at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor. Should the Customer object to these changes, they must submit a written objection to the Provider within 7 days of the date that the Provider provided notice to the Customer of the intended changes. If the Provider and the Customer are unable to resolve an objection, then the Customer may terminate the Contract on 7 days' written notice to the Provider.
- 13.12 The Provider shall ensure that each third party processor it engages is subject to equivalent legal obligations as those imposed on the Provider by this Clause 13, regardless of whether the third party processor is a European Economic Area ("EEA") based entity, or operates in a country not recognised by the European Commission as providing an adequate level of protection for Personal Data.
- 13.13 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of

the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

- 13.14 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider shall report any Personal Data breach relating to the Customer Personal Data to the Customer within 24 hours following the Provider becoming aware of the breach. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 13.14.
- 13.15 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 13 and the Data Protection Laws.
- 13.16 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 13.17 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 13. The Provider may charge the Customer at its standard time-based rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 13.17.
- 13.18 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under these Terms and Conditions, then the parties shall use their best endeavours promptly to agree such variations to these Terms and Conditions as may be necessary to remedy such non-compliance.

14. Warranties

- 14.1 The Provider shall provide the Services with reasonable skill and care, although no representation or warranty is given that the Services will be error free, or that all errors, defects or deficiencies can be corrected or remedied.
- 14.2 The Provider warrants to the Customer that:
- a) the Provider has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions;
 - b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under these Terms and Conditions; and
 - c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.
- 14.3 The Customer warrants to the Provider that it has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions.

- 14.4 Because of the uncertainty of future events and circumstances, the Provider does not warrant to the Customer that its forecasts, projections, advice or recommendations, or the contents of any report, presentation or other document will be achievable; all information supplied by the Provider will be supplied in good faith but the accuracy and completeness of any information obtained from, or based on information obtained from, the Customer or any third party is not guaranteed by the Provider; it is not within the scope of the Provider's obligations to enquire as to or to verify the accuracy or completeness of any such information.
- 14.5 All of the parties' warranties and representations in respect of the subject matter of the Contract are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Contract will be implied into the Contract or any related contract.

15. Indemnities

15.1 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of these Terms and Conditions (a "**Customer Indemnity Event**").

15.2 The Provider must:

- a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

without prejudice to the Customer's obligations under Clause 15.1.

15.3 The indemnity protection set out in this Clause 15 shall be subject to the limitations and exclusions of liability set out in the Contract.

16. Limitations and exclusions of liability

16.1 Nothing in these Terms and Conditions will:

- a) limit or exclude any liability for death or personal injury resulting from negligence;
- b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- c) limit any liabilities in any way that is not permitted under applicable law; or
- d) exclude any liabilities that may not be excluded under applicable law.

16.2 The limitations and exclusions of liability set out in this Clause 16 and elsewhere in these Terms and Conditions:

- a) are subject to Clause 16.1; and

- b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

- 16.3 The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.
- 16.4 The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.
- 16.5 The Provider shall not be liable to the Customer in respect of any loss of revenue or income.
- 16.6 The Provider shall not be liable to the Customer in respect of any loss of use or production.
- 16.7 The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.
- 16.8 The Provider shall not be liable to the Customer in respect of any loss or corruption of any data or database.
- 16.9 The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.
- 16.10 The aggregate liability of the Provider to the Customer under the Contract shall not exceed the greater of:
 - a) £500; or
 - b) the average monthly amount paid by the Customer to the Provider in the prior 12 month period under this Contract for Charges relating to the Services as defined in the Order, excluding Domain Name Services and SSL Certificate Services.

17. Force Majeure Event

- 17.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Contract (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 17.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Contract, must:
 - a) promptly notify the other; and
 - b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 17.3 A party whose performance of its obligations under the Contract is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

18. Termination

- 18.1 Either party may terminate the Contract by giving to the other party not less than 30 days' written notice of termination.
- 18.2 Either party may terminate the Contract immediately by giving written notice of termination to the other party if:

- a) the other party commits any material breach of the Contract, and the breach is not remediable;
- b) the other party commits a material breach of the Contract, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- c) the other party persistently breaches the Contract (irrespective of whether such breaches collectively constitute a material breach).

18.3 Either party may terminate the Contract immediately by giving written notice of termination to the other party if:

- a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract); or
- d) if that other party is an individual:
 - (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.

18.4 The Provider may terminate the Contract immediately by giving written notice to the Customer if:

- a) any amount due to be paid by the Customer to the Provider under the Contract is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate the Contract in accordance with this Clause 18.4.

18.5 It is the responsibility of the Customer to secure written confirmation from the Provider that the Contract has been terminated, else the Contract remains active and these Terms and Conditions will continue to apply.

19. Effects of termination

- 19.1 Upon the termination of the Contract, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 6.4, 8.3, 8.5, 9, 12, 13.1, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.10, 13.11, 13.13, 13.14, 13.15, 13.16, 13.17, 13.18, 15, 16, 19.1, 19.2, 19.3, 20, 24, 25, 26, 27.2, 28, 30, 31.2, 31.3, 31.4 and 31.5, Paragraphs 2.8, 3.1, 3.2, 3.3, 3.5, 3.8, 3.9 and 6.5 of Schedule 1 (Hosting services), Paragraphs 5.6, 6.2 and 7.6 of Schedule 2 (Domain Name Services) and Paragraphs 2.5 and 3.4 of Schedule 3 (SSL Certificate Services).
- 19.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Contract shall not affect the accrued rights of either party.
- 19.3 Within 30 days following the termination of the Contract for any reason:
- a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Contract; and
 - b) at the Customer's request and subject to Clause 19.4, the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Contract,
- without prejudice to the parties' other legal rights.
- 19.4 In the event that the Customer has prepaid for any Services that were to be provided to the Customer after the termination of this Agreement, at the Customer's request the Provider will issue a refund for full months unused; no partial month refunds will be issued, and if by prepaying the Customer received a discount, the Provider will, upon early cancellation, calculate the refund retroactively withdrawing the discount back to the start date the Services were Ordered; this will result in the Customer paying the full un-discounted price for the months used and receiving a refund for the balance.

20. Non-solicitation of personnel

- 20.1 The Customer must not, without the prior written consent of the Provider, either during the Term or within the period of 1 year following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Provider who has been involved in any way in the negotiation or performance of the Contract.

21. Notices

- 21.1 Any notice given under these Terms and Conditions must be in writing, whether or not described as "written notice" in these Terms and Conditions.
- 21.2 Any notice given by the Customer to the Provider under these Terms and Conditions must be:
- a) sent by courier;
 - b) sent by recorded signed-for post; or
 - c) sent by email to accounts@kualo.com,
- and if by courier or mail, delivered to:
- Kualo Limited, 20 - 22 Wenlock Road, London, N1 7GU, United Kingdom

- 21.3 Any notice given by the Provider to the Customer under these Terms and Conditions must be:
- a) sent by courier;
 - b) sent by recorded signed-for post; or
 - c) sent by email to the primary email address held on file in the Customer's Client Area, and if by courier or mail delivered to the primary account mailing address held on file in the Customer's Client Area.
- 21.4 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 3 Business Days following receipt of the notice.
- 21.5 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:
- a) in the case of notices delivered personally, upon delivery;
 - b) in the case of notices sent by courier, upon delivery;
 - c) in the case of notices sent by post, 72 hours after posting; and
 - d) in the case of notices sent by email, at the time of the sending of the email (providing that the sending party can provide written evidence that the email was successfully delivered to the receiving party's mail server).

22. Subcontracting

- 22.1 Subject to any express restrictions elsewhere in these Terms and Conditions, the Provider may subcontract any of its obligations under the Contract.
- 22.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

23. Assignment

Neither party may assign, transfer or otherwise deal with any of its contractual rights or obligations under this Contract without the express prior written consent of the other party, such consent not to be unreasonably withheld or delayed, providing that either party may assign or transfer these Terms and Conditions to any Affiliate of such party, or any successor in to all or a substantial part of the business of that party, upon advance written notice to the other party; in any such event, these Terms and Conditions shall bind and inure to the benefit of the successors and permitted assignees of the parties.

24. No waivers

- 24.1 No breach of any provision of the Contract will be waived except with the express written consent of the party not in breach.
- 24.2 No waiver of any breach of any provision of the Contract shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Contract.

25. Severability

- 25.1 If a provision of these Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 25.2 If any unlawful and/or unenforceable provision of these Terms and Conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

26. Third party rights

- 26.1 The Contract is for the benefit of the parties and is not intended to benefit or be enforceable by any third party.
- 26.2 The exercise of the parties' rights under the Contract is not subject to the consent of any third party.

27. Variation

- 27.1 This Contract may not be varied except in accordance with this Clause 27.
- 27.2 This Contract may be varied by means of a written document signed by or on behalf of each party.
- 27.3 The Provider may vary this Contract by giving to the Customer at least 14 days' written notice of the proposed variation, providing that if the Provider gives to the Customer a notice under this Clause 27, the Customer shall have the right to terminate this Contract by giving written notice of termination to the Provider at any time during the period of 14 days following receipt of the Provider's notice.

28. Entire agreement

- 28.1 The main body of these Terms and Conditions, the Schedules, the Annexes and the Order details shall constitute the entire agreement between the parties in relation to the subject matter of the Contract, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 28.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Contract.
- 28.3 The provisions of this Clause 28 are subject to Clause 16.1.

29. Procedure for Dispute Resolution

Disputes pertaining to this Contract shall be resolved as follows:

- 29.1 If the dispute is initiated by the Customer, the issue in dispute shall be raised to the Provider in writing by emailing management@kualo.com.
- 29.2 If the dispute is initiated by the Provider, the issue in dispute shall be raised to the Customer in writing by email to the primary email address associated with the Customer's profile within the Client Area.
- 29.3 Should this not resolve the dispute, the managing directors (or equivalent) of each party shall discuss the issues.

29.4 If the issue remains unresolved, it shall be referred to a jointly appointed mediator. If no mediator can be agreed upon, the President of the Law Society of England and Wales shall be called upon to appoint such a mediator.

29.5 If the dispute still remains unresolved, both parties agree that the courts of English law have exclusive jurisdiction to resolve said dispute.

30. Law and jurisdiction

30.1 These Terms and Conditions shall be governed by and construed in accordance with English law.

30.2 Any disputes relating to the Contract shall be subject to the exclusive jurisdiction of the courts of England.

31. Interpretation & Construction

31.1 By placing an Order with the Provider, the Customer agrees that this Contract shall constitute a binding contract between the Provider and the Customer when the Provider emails the Customer to confirm its Order.

31.2 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

- a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- b) any subordinate legislation made under that statute or statutory provision.

31.3 The clause headings do not affect the interpretation of these Terms and Conditions.

31.4 References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

31.5 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

31.6 References to any gender includes any other gender and the singular includes the plural and vice versa.

31.7 All rights and remedies referred to in these Terms and Conditions are cumulative and are not to the exclusion of other rights and remedies, unless expressly stated otherwise.

31.8 Wherever the words "including", "include", or "includes" are used they shall be deemed to be followed by the words "without limitation" unless the context otherwise requires.

31.9 If there is any conflict or inconsistency between the main body of these Terms and Conditions and any Schedule in relation to a particular Service, the terms as laid out in the Schedule shall have precedence for that Service.

SCHEDULE 1 (HOSTING SERVICES)

1. Obligation to provide Hosting Services

1.1 The Provider shall provide to the Customer any Hosting Services outlined in the order confirmation email sent by the Provider or otherwise agreed by the parties in writing in accordance with this Schedule 1.

2. Hosting Services

- 2.1 In the Case of Shared Hosting, The Hosting Platform will automatically generate a Hosting Account for the Customer on the Effective Date and will provide to the Customer login details for that Hosting Account.
- 2.2 In the case of any other Hosting Service, the Provider shall create that Hosting Service for the Customer and shall provide to the Customer login details for that Hosting Service on or promptly following the Effective Date,
- 2.3 The Provider hereby grants to the Customer a right to use the Hosting Services in accordance with any relevant documentation supplied by the Provider to the Customer during the Term.
- 2.4 The right granted by the Provider to the Customer under Paragraph 2.3 is subject to the following limitations:
- a) the Hosting Account may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer; and
 - b) the Hosting Account may only be used by the named users identified in the Customer's Client Area, providing that the Customer may change, add or remove a designated named user in accordance with the procedure set out therein.
- 2.5 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Paragraph 2.3 is subject to the following prohibitions:
- a) the Customer must not sub-license its right to access and use the Hosting Account;
 - b) the Customer must not permit any unauthorised person to access or use the Hosting Account; and
 - c) the Customer must not make any alteration to the Hosting Platform, except as expressly permitted by the documentation supplied by the Provider to the Customer.
- 2.6 The Customer shall use reasonable endeavours, including reasonable security measures relating to Hosting Account access details, to ensure that no unauthorised person may gain access to the Hosting Account or any element of the Hosting Services that is accessible using the Hosting Account.
- 2.7 The parties acknowledge and agree that Annex 1 (Availability SLA) to this Schedule 1 shall govern the availability of the Hosting Services.
- 2.8 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Hosting Platform, either during or after the Term.
- 2.9 The Provider may suspend the provision of the Hosting Services if any amount due to be paid by the Customer to the Provider under the Contract is overdue, and the Provider has given to the

Customer at least 10 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosting Services on this basis.

- 2.10 The Customer is not permitted to physically access the servers which power the Hosting Platform, or to access the data centre in which those servers are housed, without express written permission from the Provider.
- 2.11 All servers used in the provision of the Hosting Services remain the property of the Provider.
- 2.12 If the Hosting Service includes a Data Transfer limit, this limit cannot be exceeded, though more data transfer can be made available at an additional charge (not to exceed £0.50 GBP per GB of data transferred).

3. Use of Hosting Services

- 3.1 The use of the Hosting Services shall be subject to the resource limitations relating to data storage, bandwidth and server resource utilisation.
- 3.2 The Provider may charge the Customer in respect of any use of the Hosting Services that breaches the applicable resource limitations.
- 3.3 The Customer acknowledges and agrees that the Provider may implement technological measures to prevent or inhibit the use of the Hosting Services in any way in the event that the applicable resource limitations are breached.
- 3.4 The Customer must comply with Annex 2 (Acceptable Use Policy) to this Schedule 1, and must ensure that all persons using the Hosting Services with the authority of the Customer or by means of the Hosting Account comply with Annex 2 (Acceptable Use Policy) to this Schedule 1.
- 3.5 The Customer acknowledges and agrees that the Provider may send to any established and recognised anti-spam organisation such details of the Customer (which may include personal names, business names, addresses, email addresses, telephone numbers and IP addresses) as the Provider considers reasonably necessary to enable the relevant organisation to properly conduct its business.
- 3.6 The Customer must not use the Hosting Services in any way that causes, or may cause, damage to the Hosting Services or Hosting Platform or impairment of the availability or accessibility of the Hosting Services.
- 3.7 The Customer must not use the Hosting Services:
 - a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.8 The Customer must ensure that any software (including scripts) uploaded to the Hosting Platform is reasonably secure, has the appropriate file access permissions set and does not contain any malicious code.
- 3.9 If there is a breach of this Paragraph 3 or Annex 2 (Acceptable Use Policy) to this Schedule 1, the Provider may suspend the Hosting Services or any element of the Hosting Services until such time as the breach is remedied or the Customer has purchased additional resources.

4. Scheduled maintenance

- 4.1 The Provider may from time to time suspend the Hosting Services and/or access to the Hosting Account for the purposes of scheduled maintenance, providing that such scheduled maintenance must be carried out in accordance with this Paragraph 4.
- 4.2 The Provider shall where practicable give to the Customer at least 72 hours' prior written notice of scheduled maintenance that is likely to affect the availability of the Hosting Services or Hosting Account or is likely to have a material negative impact upon the Hosting Services or Hosting Account.
- 4.3 The Provider shall ensure that all scheduled maintenance is carried out outside Business Hours.

5. Hosted Data

- 5.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Hosted Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Contract, together with the right to sub-license these rights to its own hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Contract.
- 5.2 The Customer warrants to the Provider that the Hosted Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 5.3 For Shared Hosting, Reseller Hosting and VPS Hosting Services:
 - a) the Provider shall endeavour to generate a backup copy of the Hosted Data at least daily;
 - b) the Customer accepts that the Provider may at its discretion and without notice exclude certain file extensions or content from the backup copies that it creates, and in the case of VPS Hosting Services may not perform backups if the type of data stored results in it not being technically feasible to do so on the Hosting Platform;
 - c) the Customer accepts that backups are generated in good faith and without warranty;
 - d) the Provider does not provide any guarantee of successful restoration.
- 5.4 Save to the extent expressly provided otherwise in these Terms and Conditions, the Customer shall be responsible for creating and maintaining backups of the Hosted Data and any other relevant data relating to the Hosting Services stored independently of the Hosting Account, and if necessary for restoring such data to the Hosting Platform.

6. Termination of Hosting Services

- 6.1 In the case of Shared Hosting, Reseller Hosting and VPS Hosting Services, either party may terminate the Hosting Services by giving to the other party at least 10 days' written notice of termination expiring at any time after the end of the Minimum Term.
- 6.2 In the case of other Hosting Services, either party may terminate the Hosting Services by giving to the other party at least 30 days' written notice of termination expiring at any time after the end of the Minimum Term.
- 6.3 If the Hosting Services are terminated in accordance with the provisions of this Paragraph 6:

- a) the Customer must pay to the Provider any outstanding Charges in respect of Hosting Services provided to the Customer before the date of effective termination of the Hosting Services;
- b) at the Customer's request and subject to Clause 19.4, the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Hosting Services that were to be provided to the Customer after the date of effective termination of the Hosting Services; and
- c) the Contract will continue notwithstanding such termination.

6.4 For the avoidance of doubt, the Hosting Services shall automatically terminate upon the termination of the Contract.

6.5 If the Hosting Services terminate in accordance with this Paragraph 6 or the Contract terminates, then the Provider shall endeavour to ensure that the Hosted Data is available to the Customer for download from the Hosting Platform during the period up to the date of effective termination and for a period of at least 48 hours thereafter. Save as provided in this Paragraph 6.5, the Provider shall have no obligations following such termination to supply or make available to the Customer the Hosted Data.

7. Use of the word "Unlimited"

7.1 Certain Hosting Services make reference to the term 'unlimited' when referring to disk space, bandwidth or other features. The Provider will make every commercially reasonable effort to provide the Customer with all the storage, bandwidth or other advertised features that the Customer needs to successfully run its web site, providing it is in compliance with the Provider's Resource Use Policy as defined in Annex 2.

8. Right to refund

8.1 The Customer is entitled to request a refund of any Charges paid towards any Hosting Services, excluding any setup or domain registration/transfer fees, within the first 14 days of the Customer placing an Order for those Hosting Services.

8.2 Shared Hosting Services, Reseller Hosting Services and VPS Hosting Services provide an extended money back guarantee period which extends the right to refund to within the first 60 days of the Customer placing an Order for those Hosting Services, excluding any setup or domain registration/transfer fees.

ANNEX 1 (AVAILABILITY SLA)

1. Introduction to availability SLA

- 1.1 This Annex 1 sets out the Provider's availability commitments relating to the Hosting Services.
- 1.2 The Provider shall monitor the performance of its Network and Servers, and where possible will endeavour to resolve reductions in performance within a reasonable time frame.
- 1.3 The Customer acknowledges that occasional reduction in the performance of the Hosting Services normal and to be expected due to the unpredictability of both usage and conduct of other customers, and the Provider is therefore not liable for any reduction in performance of the Services.
- 1.4 Occasional required maintenance performed from time to time by the Provider and/or any subcontractors may affect the availability of Hosting Services to the Customer; the Provider will endeavour to provide as much notice as is possible in all circumstances, subject to procedures required in the event of an emergency.
- 1.5 In this Annex 1, "network uptime" means the percentage of time during a given period when the Provider's Network is available for access from the public internet.
- 1.6 In this Annex 1, "server uptime" means the percentage of time during a given period when the Hosting Services are available for delivery to the Provider's network from the web server(s) powering them, irrespective of network uptime.

2. Availability

- 2.1 The Provider shall use reasonable endeavours to ensure that the network uptime for the Hosting Services is at least 99.99% during each calendar month. The Provider shall use reasonable endeavours to ensure that the server uptime for Shared Hosting Services, Reseller Hosting Services and Fully Managed server environments is at least 99.9% during each calendar month.
- 2.2 The Provider shall be responsible for measuring Uptime, and shall do so using its own automated systems, each calendar month. Uptime is calculated to the nearest minute, based on the number of minutes in the given month (for instance, a 31-day month contains 44,640 minutes). A day is defined as the time between 00:00 and 23:59 UTC.
- 2.3 The Provider shall provide uptime measurements to the Customer upon request.

3. Service credits

- 3.1 In respect of each calendar month during which the Hosting Services uptime is less than the commitment specified in Paragraph 2.1, the Customer may earn service credits in accordance with the provisions of this Paragraph 3.
- 3.2 Should the level of availability fall below the network uptime or server uptime commitments, the Provider may issue a service credit to the Customer for Charges (calculated on a pro-rated basis in the case of a payment frequency greater than monthly) relating to the Hosting Services affected by the unavailability in that calendar month:
 - a) In the case of network uptime falling below 99.99%, the Provider will issue a 1% credit to the Customer for every 1 minute of network downtime; and
 - b) In the case of server uptime falling below the following pre-defined levels, the Provider shall issue a credit to the Customer on the following basis:

Below 99.9%: 10% credit
Below 99.5%: 25% credit
Below 99%: 50% credit
Below 98%: 100% credit

- 3.3 The Provider shall deduct an amount equal to the service credits due to the Customer under this Paragraph 3 from future amounts invoiced in respect of the Charges for the Hosting Services. All remaining service credits shall be deducted from each invoice issued following the reporting of the relevant failure to meet the uptime commitment, until such time as the service credits are exhausted.
- 3.4 Service credits shall be the sole remedy of the Customer in relation to any failure by the Provider to meet the uptime guarantee in Paragraph 2.1.
- 3.5 Upon the termination of the Contract, the Customer's entitlement to service credits shall immediately cease, save that service credits earned by the Customer shall be offset against any amounts invoiced by the Provider in respect of Hosting Services following such termination.
- 3.6 To receive service credit under this SLA, the Customer should contact the Provider in writing by raising a ticket for the Provider's accounts department via the Customer's Client Area.
- 3.7 Each request in connection with this SLA must include the dates and times of Hosting Service unavailability and must be received by the Provider by the 10th day of the month following said unavailability, and in the event of the unavailability being confirmed by the Provider, credits will be applied to the Customer's account within two months.

4. Exceptions

- 4.1 Downtime caused directly or indirectly by any of the following shall not be considered when calculating whether the Provider has met the uptime guarantee given in Paragraph 2.1:
- a) a Force Majeure Event;
 - b) a fault or failure of the internet or any public telecommunications network;
 - c) a fault or failure of the Provider's hosting infrastructure services provider, unless such fault or failure constitutes an actionable breach of the contract between the Provider and that company;
 - d) a fault or failure of the Customer's computer systems or networks;
 - e) any breach by the Customer of the Contract;
 - f) scheduled maintenance carried out in accordance with the Contract;
 - g) DNS issues outside the direct control of the Provider;
 - h) a fault that is the result of customer's acts or omissions (or acts or omissions of others engaged or authorised by the Customer), including custom scripting or coding (e.g. CGI, Perl, HTML, PHP, and all or any related or equivalent languages/applications);
 - i) Issues with FTP, POP, IMAP, SMTP or Control Panel access;
 - j) Emergency maintenance and upgrades; or
 - k) E-mail or webmail delivery or transmission.

4.2 The Provider will guarantee only those areas considered under its direct control, including Servers and Network equipment.

ANNEX 2 (ACCEPTABLE USE POLICY)

1. Introduction

- 1.1 References in this Policy to "you" are to the Customer, Client or individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to Kualo Limited (and "we" and "our" should be construed accordingly).
- 1.2 This acceptable use policy (the "**Policy**") sets out the rules governing:
- a) the use of our Hosting Platform, Network and related services (the "**Services**"); and
 - b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.3 By using the Services, you agree to the rules set out in this Policy.

2. General usage rules

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services, Hosting Platform, Network or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
- a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or
 - b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.
- 2.4 In respect of Shared Hosting Services, you must agree to our "Resource Usage Policy" as documented at: <https://www.kualo.com/webhosting/resource-usage-policy>
- 2.5 In respect of Reseller Hosting Services, you must agree to our "Reseller Resource Usage Policy" as documented at <https://www.kualo.com/resellers/resource-usage-policy>
- 2.6 The Customer agrees that the Provider may update the "Resource Usage Policy" and "Reseller Resource Usage Policy" at any time and without any obligation to notify the Customer.

3. Unlawful Content

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).
- 3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:
- a) be libellous or maliciously false;
 - b) be obscene or indecent;
 - c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;
 - d) infringe any right of confidence, right of privacy or right under data protection legislation;
 - e) constitute negligent advice or contain any negligent statement;

- f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;
 - g) be in contempt of any court, or in breach of any court order;
 - h) constitute a breach of racial or religious hatred or discrimination legislation;
 - i) be blasphemous;
 - j) constitute a breach of official secrets legislation; or
 - k) constitute a breach of any contractual obligation owed to any person.
- 3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

4. Graphic material

- 4.1 Content must not depict violence in an explicit, graphic or gratuitous manner.
- 4.2 Content must not be pornographic, and the decision as to what constitutes pornographic Content is at the sole discretion of the Provider.

5. Marketing and spam

- 5.1 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.
- 5.2 You must not send any spam or other unsolicited marketing communications to any person using any email address or other contact details made available through the Services. In addition, purchased email lists are expressly prohibited.
- 5.3 You must not use the Services to promote, host or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, multi-level marketing schemes, "get rich quick" schemes or similar letters, schemes or programs.
- 5.4 The use of a third party network to transmit spam if the communication advertises or mentions in any way a service hosted within our Network is prohibited.
- 5.5 You must not use the Services in any way which is liable to result in the blacklisting of any of the Provider's IP addresses.

6. Regulated businesses

- 6.1 You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity, unless specifically authorised in writing by the Provider.
- 6.2 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of drugs or pharmaceuticals, unless specifically authorised in writing by the Provider.
- 6.3 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of knives, guns or other weapons, unless specifically authorised in writing by the Provider.

7. Monitoring

7.1 You acknowledge that we may actively monitor the Content and the use of the Services.

8. Data mining

8.1 You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

9. Harmful software

9.1 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.

9.2 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

SCHEDULE 2 (DOMAIN NAME SERVICES)

1. Obligation to provide Domain Name Services

1.1 The Provider shall provide to the Customer in accordance with this Schedule 2 any Domain Name Services specified in an Order or otherwise agreed by the parties in writing.

2. Registration of domain names

2.1 The Provider shall attempt to register any domain names that the Customer orders, subject to the payment of the applicable Charges in advance, and provided that such domain names do not violate any applicable law, rule or regulation or the policies of the applicable Registrar or Registry.

2.2 The Provider may reject any request to register a particular domain name by giving a written notice of rejection to the Customer, notwithstanding the other provisions of this Paragraph 2.

2.3 The Provider does not guarantee that any attempt to register a domain name will be successful.

2.4 The Customer accepts that the Provider is unable to verify or check for errors in domain registration requests. Accordingly, the Customer is solely responsible for ensuring that a domain name has the correct or intended spelling.

2.5 Unless otherwise agreed in writing by the Provider, the Customer's domain will not be registered until the Provider receives payment of the applicable Charges in cleared funds.

2.6 If the Provider does register a domain name prior to payment of the applicable Charges, the Provider reserves the right to cancel that registration or restrict use of the domain name until payment has been received.

2.7 The Customer accepts that a successful domain registration is final, and non-refundable.

3. Domain name transfers and ownership

3.1 The Provider shall attempt to determine the ownership of a domain based on the details held in the WHOIS database. If the WHOIS database details are not determinative, then the Provider shall be entitled to request whatever supporting evidence it may require to ascertain ownership.

3.2 If the Customer wishes to transfer ownership of a registered domain, it must:

- a) ensure that all necessary consents and permissions to that transfer have been obtained; and
- b) deliver to the Provider documentary evidence of all such relevant consents and permissions; and
- c) accept that the Provider is under no obligation to carry out any transfer request if the Customer fails to satisfy the Provider that the documentation provided shows the transfer to be properly requested or authorised or where the Customer has not complied with this Clause 3.

3.3 The transfer service offered by the Provider is supplied on the basis that the Customer is solely responsible for:

- a) changing the tag (in respect of .UK domain names or other gTLD domains); or
- b) completing the transfer process by having access to the domain name's administrative contact as listed in the WHOIS database; and

- c) clicking the link sent by email to authorise the transfer; and) ensuring that the transfer completes to the Customer's specifications.
- 3.4 If a domain transfer fails or is otherwise cancelled, the Customer will be responsible for contacting the Provider to request a refund for the incomplete transfer, if applicable.
- 3.5 The Customer agrees that on transferring ownership of a registered domain name to another person or registering a domain name on behalf of another person (the "Transferee") the Customer will confirm and be able to prove that the Transferee agrees in writing to be bound by these Terms and Conditions at the Provider's request.
- 3.6 The Provider will not transfer ownership of a domain name until all fees attributable to the services associated with the account, which are due have been paid by the Customer to the Provider.

4. Maintenance of domain name registrations

- 4.1 The Provider shall use reasonable endeavours to maintain the registration of any domain names registered through the Domain Name Services, subject to the payment in advance by the Customer to the Provider of any Charges due in respect of the renewal of such domain name registrations.
- 4.2 The Provider shall endeavour to automatically renew a domain name on behalf of the Customer when it is due for renewal subject to the following:
- a) The Customer has a valid and up-to-date credit or debit card on its account; and
 - b) The Customer has not turned off automatic renewal in the Client Area; and
 - c) The Customer has not requested the Provider to turn off automatic payment processing; and
 - d) The Customer did not originally pay for the domain registration or transfer with a non-automated payment method, including PayPal or Bank Transfer;

If any of the above apply then the Provider shall not automatically Charge the Customer and renew a domain name and the Customer is entirely responsible for any consequences arising from a domain name not being renewed.

- 4.3 Domain names which are automatically renewed by the Provider will be renewed for the same duration as the initial registration period, unless the Provider is otherwise instructed in writing by the Customer.
- 4.4 In the case of automated domain renewals, the Provider shall take payment for domain renewals up to 10 days prior to the domain name expiration date in order to ensure the domain name is renewed on time, and the Provider will issue a renewal invoice to the customer at least 15 days before applying a Charge to the Customers credit or debit card.
- 4.5 Domain name renewals will be charged at the Provider's prevailing rate at the time of the renewal, as may vary from time to time; the Customer agrees that it is its responsibility to review the renewal cost on the invoice it was issued in relation to the domain name renewal Charge.
- 4.6 The Customer agrees that if it objects to any Charge for domain name renewal, that it must notify the Provider before the due date of the invoice pertaining to that charge, otherwise the Customer forgoes any right to cancel that renewal or to receive a refund for that Charge.

- 4.7 The Provider's sole responsibility in connection with any domain renewal will be to process the renewal using the renewal mechanism provided by the Registrar, and the Provider will have no responsibility or liability for any loss, interruption in service, service error or loss of data caused by the Registrar or by any failure in communication between the Provider and Registrar's computer systems, howsoever caused.
- 4.8 The Provider will endeavour to notify the Customer of upcoming domain expirations within 30 days of the expiry date by email; notifications shall be sent to the Customer's primary contact email address as specified in the Provider's Client Area, and as updated from time to time by the Customer; the Customer agrees that beyond this email notification, the Provider bears no other responsibility to notify the Customer of any impending domain name expiration dates, and that the Customer is wholly responsible for ensuring its domain registrations are renewed in sufficient time.
- 4.9 In the event that a domain name is not renewed by its expiry date it shall cease to operate and shall be deemed to be expired and Clause 4.10 below shall apply.
- 4.10 The Provider will endeavour to renew domain names on behalf of the Customer, however, the Provider makes no guarantee that attempted renewals, including attempts to renew expired domains, will be successful and it is the Customer's responsibility to check the WHOIS database, and any other source, to ensure the domain name has been renewed.

5. Customer obligations and Domain Name Services

- 5.1 The Customer warrants to the Provider that:
- a) the information submitted by or on behalf of the Customer for the purposes of a domain name registration is current, accurate and complete;
 - b) the Customer has the legal right to apply for and use the domain name; and
 - c) the use of the domain name by the Customer will not infringe any person's Intellectual Property Rights or other legal rights.
- 5.2 The Customer agrees to indemnify the Provider against any infringement of third-party rights caused by the registration of a domain name for the Customer, and that the Provider provides no warranty against such infringements.
- 5.3 The Customer shall promptly notify the Provider of any changes to the information required for the purposes of a domain name registration, and the Customer acknowledges that additional Charges may be payable in respect of the updating of that information with the relevant third parties.
- 5.4 The Customer acknowledges that certain information submitted for the purposes of a domain name registration will be published on the internet via "WHOIS" services.
- 5.5 With reference to each domain name in respect of which the Domain Name Services are provided, the Customer must comply with all the rules and policies from time to time of the relevant registry or registration authority.
- 5.6 With reference to each domain name in respect of which the Domain Name Services are provided, the Customer hereby agrees to and must comply any applicable domain name registration agreement notified by the Provider to the Customer (including any amendments notified by the Provider to the Customer).

- 5.7 The Customer acknowledges that its rights to any domain name registered or renewed by the Provider are not being granted by the Provider but are subject to the rules and regulations of ICANN, the Registrar, the Registry and applicable law. Accordingly, the Customer acknowledges that the contract for registration is between the Customer and the Registrar, and that the Provider is purely acting as an agent for said Registrar.
- 5.8 The Customer's inability to use a domain name shall not entitle the Customer to a refund by the Provider of any Charges paid with respect to the registration of such unusable domain name.
- 5.9 The domain name shall be the property of the Customer for the duration that the Customer has paid for that domain name, as confirmed by the Provider by email following registration or renewal.
- 5.10 Domain registrations are a bespoke purchase to the Customer's specification and accordingly the Customer, when a consumer, waives any right to a cooling off period that may be applicable. If the Customer as a consumer is not willing to waive such right, then the Customer must make the Provider aware of the same and the Provider will be unable to register a domain name until after the applicable cooling off period has expired.
- 5.11 All fees paid for domain registrations and renewals must be prepaid and are non-refundable, in whole or in part, even if the domain name registration is suspended, cancelled or transferred prior to the end of the registration term; this is due to the bespoke nature of domain names and the Customer accepts this to be a fair apportionment of risk given the Provider's inability to claim a refund from the relevant Registry.
- 5.12 In the event of a charge back by a credit card company or other payment provider authorised by the Provider, the domain name registration shall be transferred to the Provider as the paying entity for the registration; The Provider may reinstate the domain name registration at its sole discretion upon its receipt of the registration or renewal Charge from the Customer.

6. Domain name disputes

- 6.1 The Provider shall not and shall have no obligation to offer or provide any legal or other advice in relation to any actual or potential domain name dispute.
- 6.2 Subject to Clause 16.1 of the main body of these Terms and Conditions, the Provider shall have no liability in respect of the suspension or loss of a domain name as a result of any domain name arbitration procedure or court proceedings.
- 6.3 In the event that the Provider receives a complaint in regards to trademark / brand infringement, the Provider has the right to place a domain name on hold and move into the Provider's holding account; the Provider shall take this action if in receipt of a decision from a Domain Dispute Resolution and/or a settlement agreement between the parties concerned; should this happen, any renewal payments must continue to be paid to the Provider by the Customer.
- 6.4 In the event of receiving documentation which matches the WHOIS details, the Provider reserves the right to move the concerned domain name from the current domain name holder's Client Area into the Provider's holding account, lock the domain and place a registrar hold on it; the Provider shall not move the concerned domain name(s) from this status until it is satisfied that the dispute has been resolved between the parties concerned, with documentation provided to the Provider by both parties proving the same; this documentation may include a court order, an email/letter/legal document from the current domain holder and the complainant both stipulating the transfer of the domain to the complainant.

7. Termination of Domain Name Services

- 7.1 The Provider may terminate the Domain Name Services by giving to the other party at least 15 days' written notice of termination.
- 7.2 Domain terminations by the Customer must be requested through the Provider's Client Area, by turning off Domain Auto Renewal, and must be completed at least 10 days prior to the expiration date.
- 7.3 A registered domain shall expire if the Provider is unable to take payment via the method stored on the Customer's account, where the Customer has set the domain to not automatically renew, or where the Customer fails to manually renew the domain name by the renewal date.
- 7.4 If the Domain Name Services are terminated in accordance with the provisions of this Paragraph 7:
 - a) the Customer must pay to the Provider any outstanding Charges in respect of Domain Name Services provided to the Customer before the date of effective termination of the Domain Name Services;
 - b) the Contract will continue notwithstanding such termination.
- 7.5 For the avoidance of doubt, the Domain Name Services shall automatically terminate upon the termination of the Contract.
- 7.6 Upon the termination of the Domain Name Services (whether or not the Contract is terminated), then all of your rights in or in respect of relevant domain names shall immediately cease, save to the extent that you have transferred relevant domain names to another domain name registration service provider before the date of effective termination.
- 7.7 Following the expiry date a domain may enter a grace and/or redemption period. Certain registries do not allow for grace and/or redemption periods, and a list of these may be made available to the Customer by the Provider upon written request.
- 7.8 Domain names from Registries which do not allow for a grace and/or redemption period may be unrecoverable by the Customer or the Provider following the expiration date, and the Customer agrees that the Provider will not be liable to the Customer in the event that the domain name is non-recoverable.
- 7.9 The Customer acknowledges that upon expiration of a domain name, the Provider may in its sole discretion carry out any of the following actions:
 - a) Renew the domain;
 - b) Park the domain on different nameservers from those set by the Customer;
 - c) Where the relevant registry does not allow for grace or redemption periods, cancel the domain.
- 7.10 Provided that the relevant Registry for the domain name allows a grace period, the Customer acknowledges that it has up to 16 days following the expiration of the domain names ('the Grace Period') to contact the Provider to retrieve and renew the domain name provided that the Customer pays for said renewal in full and in cleared funds.
- 7.11 On receipt of the renewal fee by the Provider within the Grace Period, the Customer will retain ownership of the domain names and as soon as reasonably practicable the Provider shall restore the domain names.

7.12 The Customer acknowledges that following the end of the Grace Period the Provider may at its sole discretion carry out one or all of the following actions:

- a) change the domain's contact details; or
- b) transfer the domain to a new legal owner; or
- c) auction the domain.

7.13 Provided that the relevant Registry of the domain name allows for a redemption period, if the Provider receives a request from the Customer to renew an expired domain name after the end of the Grace Period ('the Redemption Period'), the Customer agrees to pay the applicable redemption fee plus the renewal fee for the domain name; both the length of the Redemption Period and the redemption fee varies depending on the Registry or domain extension, and a list of these may be made available to the Customer by the Provider upon written request.

Where the customer wishes to pay in any other currency other than Pounds Sterling (GBP) the customer Agrees that the charge will be levied at an equivalent rate according to the Interbank exchange rate + 5%.

8. Agreement to Registrar Terms

- 8.1 In submitting an Order for domain name registration, renewal or transfer, the Customer agrees to also be bound by the applicable Registrar's terms and conditions; if the Order specifies a Registrar other than one listed in this Clause 8, the Customer agrees to the terms and conditions of such Registrar as the same may be posted on the web site of such Registrar from time to time.
- 8.2 All registrations and renewals of .UK domain names, including direct .uk domains and 3rd level .UK domains such as .co.uk, .org.uk and .me.uk, will be subject to the terms and conditions of the Registrar, Nominet Ltd., as published on its web site at <https://www.nominet.uk/resources/policy/policies-rules/>.
- 8.3 All other domain extensions will be subject to the terms and conditions of the Registrar, P.D.R. Solutions (U.S.) LLC, as published at <http://assets.resourceserver.org/docs/domain-reg-agreement.pdf>

SCHEDULE 3 (SSL CERTIFICATE SERVICES)

1. Obligation to provide SSL Certificate Services

1.1 The Provider shall provide to the Customer in accordance with this Schedule 3 any SSL Certificate Services specified in an Order or otherwise agreed by the parties in writing.

2. SSL Certificate Services

- 2.1 The Provider shall endeavour to purchase and install any SSL certificate per the Customer's Order, subject to the payment of the applicable Charges in advance.
- 2.2 The Provider shall have no responsibility for the maintenance of any SSL certificate subscription; it shall be the Customer's responsibility to ensure that SSL certificate subscriptions are maintained and renewed and that applicable maintenance and renewal charges are paid.
- 2.3 The Customer warrants to the Provider that all the information submitted by or on behalf of the Customer for the purposes of an SSL certificate purchase or otherwise in respect of an SSL certificate is current, accurate and complete.
- 2.4 The Customer shall promptly notify the Provider of any changes to the information required for the purposes of an SSL certificate purchase, and the Customer acknowledges that additional Charges may be payable in respect of the updating of that information with the relevant third parties.
- 2.5 With reference to each SSL certificate in respect of which the SSL Certificate Services are provided, the Customer hereby agrees to and must comply any applicable SSL certificate subscription agreement notified by the Provider to the Customer (including any amendments notified by the Provider to the Customer).

3. Termination of SSL Certificate Services

- 3.1 Either party may terminate the SSL Certificate Services by giving to the other party at least 10 days' written notice of termination.
- 3.2 If the SSL Certificate Services are terminated in accordance with the provisions of this Paragraph 3:
- a) the Customer must pay to the Provider any outstanding Charges in respect of SSL Certificate Services provided to the Customer before the date of effective termination of the SSL Certificate Services;
 - b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of SSL Certificate Services that were to be provided to the Customer after the date of effective termination of the SSL Certificate Services; and
 - c) the Contract will continue notwithstanding such termination.
- 3.3 For the avoidance of doubt, the SSL Certificate Services shall automatically terminate upon the termination of the Contract.
- 3.4 Upon the termination of the SSL Certificate Services (whether or not the Contract is terminated), then all of the Customer's rights in or in respect of relevant SSL certificates shall immediately cease.

SCHEDULE 4 (WEB SUPPORT AND MAINTENANCE SERVICES)

1. Obligation to provide Support Services and Maintenance Services

1.1 The Provider shall provide the Customer with Support Services related to the Services provisioned by the Provider per the Customer's Order, or otherwise agreed by the parties in writing in accordance with this Schedule 4.

2. Support Services

2.1 The Provider shall provide the Support Services to the Customer during the Term.

2.2 The Provider shall provide the Support Services without a Service Level Agreement, unless otherwise agreed in writing.

2.3 Support services are expressly provided without warranty.

2.4 In the event that a fully managed Support Service is supplied by the Provider, the Customer acknowledges that root or administrative level access to the Server(s) by the Customer or any third party the Customer might request be given access will not be granted, unless otherwise agreed by the Provider in writing.

2.5 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Contract is overdue, and the Provider has given to the Customer at least 10 days' written notice, following the amount becoming overdue, of its intention to suspend the Services on this basis.

2.6 The Customer may terminate the Support Services by giving to the Provider at least 10 days' written notice expiring on or at any time after the first anniversary of the Effective Date.

2.7 If the Support Services are terminated in accordance with the provisions of this Paragraph 2:

- a) the Customer must pay to the Provider any outstanding Charges in respect of Support Services provided to the Customer before the termination of the Support Services;
- b) at the Customer's request and subject to Clause 19.4, the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Support Services that were to be provided to the Customer after the termination of the Support Services; and
- c) the provisions of this Paragraph 2, excluding this Paragraph 2.7, shall cease to apply, but the other provisions of the Contract will continue notwithstanding such termination.

2.8 For the avoidance of doubt, the Support Services shall automatically terminate upon the termination of the Contract.

SCHEDULE 5 (DATA PROCESSING INFORMATION)

1. Categories of data subject

Categories of data subject may include but not be limited to the Customer; third parties connected with the Customer or the Customer's Clients including employees, contractors, prospects, collaborators, business partners, suppliers and subcontractors; third party entities communicating with or transferring Personal Data to the Customer's or Customer's Client's end users.

2. Types of Personal Data

Types of Personal Data may include but not be limited to Contact information, website, system or software usage information, localisation data (including IP addresses), email data, website data, database data and other electronic data submitted, stored, sent, or received by users of the Services.

3. Purposes of processing

Personal Data will be processed to:

- a) facilitate the Provider successfully providing and maintaining the Customer's Services or otherwise fulfilling its obligations under this Contract;
- b) provide the Customer with account related assistance including Support Services; and
- c) for any disclosures as required by applicable law.

4. Security measures for Personal Data

Available upon request.

5. Sub-processors of Personal Data

Available upon request.