

# OPERATIONAL SUPPORT AGREEMENT

between

**SiteShield**

And

[ **Client Name** ]

THIS AGREEMENT is dated DD/MM/YYYY

## PARTIES

- (1) **SiteShield** of 1a Brighthouse Business Village, Brighthouse Road, Middlesbrough, England, TS2 1RT, (“Company”)
- (2) [ ] (“Client”).

“**Force Majeure**” means any event that is beyond the reasonable control of the parties and includes, but is not limited to, acts of God; acts of war; national emergencies; governmental action; union action; civil unrest; fire; explosion; flood and theft.

“**Initial Period**” means a period of 12 months commencing on the Commencement Date.

“**Renewal Period**” means each successive 12-month period after the Initial Period for which the Agreement is renewed.

“**Services**” means the work and other activities to be undertaken by the Company during the Term which the Company is contracted to provide Services to the Client.

“**Term**” means the Initial Period together with all Renewal Periods.

## 1. S I T E S H I E L D S E R V I C E S

1.1. During the Term, the Company shall provide the Client with the Services as detailed at Schedule 1 to this Agreement for the specified Web Site as hosted by the Company.

## 2. C H A R G E S

2.1. For the performance of the Services, the Client shall pay to the Company the Standard Fees as detailed at Schedule 1 to this Agreement.

2.2. For the performance of any Additional Services, the Client shall pay to the Company the Additional Services Fees as detailed at Schedule 1 to this Agreement.

2.3. The Standard Fees and the Additional Services Fees shall be inclusive of all expenses, other than those recoverable in accordance with this Agreement, and the Company shall be responsible for all costs and expenses incurred in providing the Services (other than those recoverable in accordance with this Agreement).

2.4. The Standard Maintenance Fees shall be due and payable in full to the Company annually in advance, on receipt of a valid invoice from the Company. Any Additional Services Fees shall be due and payable monthly, on receipt of a valid invoice from the Company. Any charges

for spare parts recoverable in accordance with this Agreement shall be due within 14 days of receipt of a valid invoice from the Company.

- 2.5. The Company reserves the right to claim statutory interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.
- 2.6. All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Client at the rate and in the manner for the time being prescribed by law.
- 2.7. The Company may, at any time after the first anniversary of the Commencement Date, increase the Standard Fees, provided that:
  - (a) the increase shall not exceed a reasonable percentage reflecting the Company's current pricing; and
  - (b) the increases shall be no more frequent than 3 times in any 12-month period.

### **3. TERM AND TERMINATION**

- 3.1. This agreement shall commence on the Commencement Date and shall remain in force, unless terminated earlier in accordance with this Agreement, for the Initial Period.
- 3.2. The Term of the agreement shall automatically be extended for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period, unless a party gives written notice to the other party, not later than 30 days before the end of the Initial Period or the relevant Renewal Period, to terminate this agreement.
- 3.3. The Company reserves the right to terminate this Agreement at any point with one months notice at the Company's discretion, or
- 3.4. The Company reserves the right to terminate this Agreement or to suspend the Service in the following circumstances:
  - (a) If the Client fails to pay fees due under this Agreement;
  - (b) If the Client is in breach of the terms of this Agreement;
  - (c) If the Client becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;
  - (d) If the Client is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986; or
  - (e) If the Client has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order.

3.5. The Client may request the termination of the Service and this Agreement by written notice, 1 month in advance. The following shall apply to such situations:

- (a) Any issuing of refunds is at the sole discretion of the Company.
- (b) If the Client wishes to terminate during the course of a 12 month period of Service provision the Service will end 1 month after the Company receives the Client's notice.

#### **4. CHANGES TO THIS AGREEMENT**

- 4.1. The Company reserves the right to change the terms of this Agreement and all other terms and conditions and policies which may affect Clients in order to comply with changes in the law.
- 4.2. The Client will be informed of any such changes and shall be deemed to be bound by them 1 calendar month after receiving the notice.
- 4.3. If the Client does not agree to be bound by the changes they may terminate this Agreement in accordance with the Term and Termination clause of this Agreement.

#### **5. LIABILITY**

- 5.1. The Company shall not be liable to the Client or to third parties for:
  - (a) Any losses resulting from interruptions or downtime to the Service;
  - (b) Any inability, on the part of the Client, to use the Service;
  - (c) Any damage or loss resulting from the loss of confidentiality caused by the storage of information on the internet.
  - (d) Nothing in this Clause shall exclude the liability of the Company for death or personal injury resulting from the Company's negligence or that of its employees or agents.

#### **6. WARRANTIES.**

- 6.1. Both Parties warrant that they are authorised and permitted to enter into this Agreement, and have obtained all necessary permissions and approvals; and
- 6.2. Both Parties warrant and undertake that they are not aware as at the date of the proposal acceptance of anything within their reasonable control which might or will adversely affect their ability to fulfil the obligations under this Agreement.
- 6.3. Except as expressly stated in the Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the extent permitted by law.

#### **7. FORCE MAJEURE**

- 7.1. Neither the Company nor the Client shall be liable for breaching this

Agreement where that breach results from Force Majeure

## **8. ASSIGNMENT**

- 8.1. The Company reserves the right to assign or otherwise transfer any rights or obligations under this Agreement.
- 8.2. The Client may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Company.

## **9. SEVERANCE**

- 9.1. In the event that any provision of this Agreement is found to be invalid or otherwise unenforceable for any reason, the remaining provisions shall continue in full force without being impaired or invalidated in any way. The waiver by either party of any provision of this Agreement will not operate or be interpreted as a waiver of any other provision or a subsequent breach of any provision.

## **10. LAW AND JURISDICTION**

- 10.1. This Agreement is governed by the laws of England and Wales. Any dispute relating to this Agreement shall fall within that jurisdiction.

## **11. MEDIATION**

- 11.1. If at any time any question, dispute or difference whatsoever shall arise as to the formation, meaning, operation, validity or effect of the Contract or the rights, duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of the Contract, either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to a mutually agreed Third Party Mediator within 14 days of such notice.

## **12. ARBITRATION**

- 12.1. If an attempt at Mediation as in Clause 11 should fail then the dispute or difference shall be referred to the arbitration of a single arbitrator to be agreed upon by the parties within 14 days of the failure of such an attempt, or in default of such agreement, to be nominated by the President for the time being of the Law Society of England and Wales such arbitration to be conducted in accordance with the Arbitration Act 1996.

## **13. HEADINGS**

- 13.1. The headings in these Terms and Conditions are for convenience only and are not intended to have any legal effect.

## **14. THIRD PARTY RIGHTS**

- 14.1. A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## **15. ASSIGNMENT**

15.1. The Agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**16. WAIVER**

16.1. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**17. NOTICE**

17.1. Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next-working-day delivery service, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

(a) Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, at 9.00 am on the second Business Day after posting.

(b) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include e-mail.

**18. VARIATION**

18.1. No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**19. SEVERANCE**

19.1. If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

**20. NO PARTNERSHIP OR AGENCY**

20.1. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.



## **Schedule 1:**

### **Part 1: Key details**

This Agreement is for an Initial Period from the commencement date. Following the end of the initial contract period the contract will automatically renew year to year unless terminated.

### **Part 2: Services**

Under this Agreement you are entitled the following:-

SiteShield is a website management service that allows the espressoweb Web Developers to update plugins and theme files. The service is provided on a paid for, monthly subscription basis, and involves monthly checks, assessments, work carried out where necessary and an optional report of the elements looked at over the previous 30 days.

SiteShield allows the team to log into a website, check for any relevant updates available, check for any improvements that could be made to further optimise and prolong the life of the website, and assess on the best course of action going forward with the website.

Website updates are available on a regular basis, at varying degrees, from small plugin updates to major theme based updates. The tests involve a comparison of how the updates available, will affect the functionality, performance and design of the website. Giving the development team the option of installing the update, or preserving the site without the update. The service encourages constant checks from the team to maintain a high level of performance within the site, with in the back end CMS and the front end, user facing side of the website. These updates result in a more succinct and 'well-oiled' website going forward, and works to avoid major issues with a website for the life-cycle of the website.

The SiteShield service includes many security features such as two-factor authentication, among others. The security features work to prevent a website from being hacked, but cannot guarantee that the site will not be hacked. If a website is hacked, whilst subscribed to SiteShield. We are not liable for the hacking or the down-time of the website, including any subsequent issues such as loss of business, including sales/purchases.

Should a website face any issues whilst being subscribed to the monthly SiteShield service, such as down-time offline or hacking, we will work towards rectifying the issue, however we are not liable for the issue. Fixing this issue



may incur more costs on top of the monthly service fee, depending on the fixes required and hours spent fixing the issues.

### Part 3: Standard Fees

The monthly subscription to the SiteShield service starts at £50.00 per calendar month for brochure sites. This price increases year on year as the website gets older and naturally requires more work and labour time. For commerce websites, the monthly fee starts at £100 as these sites naturally require more work to maintain. These fees only cover the installation and improvements that are free. Some updates that are released for plugins and WordPress based themes are free to purchase and install, whilst others are paid for.

### Part 4: Additional Fees

The monthly subscription to the SiteShield service, does not include the price of paid updates. These are chargeable at an extra cost (dependent upon the price of the update and the working hours required to install and measure the success of the update), alongside the monthly fee.

Any major issues that the website may see, either caused by the client or external parties, that need to be fixed, we may need to add additional costs to the monthly service cost, in order to fix these. Espressoweb would not be liable for any issues that have been caused by the client or any external, third party, that has access o the website, at the clients discretion.

**We/I hereby declare that we/I have read, understood and accept the terms and conditions of this Operational Support Agreement**

<b>Signed by</b>	<b>Print Name</b>	<b>Date</b>
.....	.....	.....
.....	.....	.....

for and on behalf of the Client

<b>Signed by</b>	<b>Print Name</b>	<b>Date</b>
.....	.....	.....
.....	.....	.....

For and on behalf of the Company