

The Smart Marketing & Media Group Limited
Terms and Conditions of Business

This provision applies to all of the Conditions for whatever service or product, set out below:

You agree that any claim arising out of or connected to your instructions will be brought only against us and not against any of our members, partners, directors, employees, consultants, solicitors or agents even if they have been negligent. The fact that an individual member, partner, director, employee, consultant or agent signs in his or her own name any letter or other document in the course of carrying out work for you does not mean that he or she is assuming any personal legal liability for that letter or document. Each of our members, partners, directors, employees, consultants, solicitors or agents is entitled to enforce this paragraph pursuant to the Contracts (Rights of Third Parties) Act 1999.

This section of our Conditions govern all of your dealings with us in the supply of Services.

The Customer's attention is particularly drawn to the provisions of clause 9.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.33.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.8.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from the Supplier.

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for the Services, as set out in the Customer's written acceptance of the Supplier's quotation, or as confirmed verbally by the Customer, or overleaf, as the case may be.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by the Supplier to the Customer.

Supplier: The Smart Marketing and Media Group Limited (registered in England and Wales with company number 05069286).

Supplier Materials: has the meaning set out in clause 4.1(f).

- 1.2 Construction. In these Conditions, the following rules apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - (b) a reference to a party includes its successors or permitted assigns;
 - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Customer acknowledges that it has authority and capacity to enter into the Contract. The Customer hereby acknowledges that it is not dealing as a consumer. If it is dealing as a consumer, the Customer must inform the Supplier as these terms may not apply.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures (whether literature or shown by electronic means) are produced for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.8 A quotation or estimate for the Services given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 28 Business Days from its date of issue. The Supplier shall base the estimate on the current costs of production, and the Supplier reserves the right to amend the estimate at any time.
- 2.9 It is the Customer's sole responsibility to request an estimate before placing an Order, and to raise any specific concerns with the Supplier.
- 2.10 If the costs of the Services has not been expressly agreed at or before the time an Order is placed the Supplier reserves the right to charge the Customer in accordance with their normal pricing structure (a copy of which is available upon request) and the

Customer shall not subsequently dispute the costs incurred in relation to the Services.

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 It is the Customer's responsibility to ensure that the specification or description of the product or service that they are ordering is correct and will meet their requirements. The Supplier is not responsible for checking whether or not the Services that the Customer has asked the Supplier to supply are suitable for their purposes.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
 - (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services, and specifically in accordance with clause 4.3;
 - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
 - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - (f) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
 - (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

- (d) any printed and PDF proofs of all work may be submitted for the Customer's approval and the Supplier shall incur no liability for any errors not corrected by the Customer in proofs submitted. Additional charges shall be made for any extra proofs that are necessary as a result of alterations required by the Customer. When style, type or layout is left to the Supplier's discretion, any subsequent changes to such style, type or layout required by the Customer shall be subject to additional charges on a time and materials basis.
 - (e) All work carried out, whether experimentally or otherwise, at the Customer's request, shall be chargeable at £75.00 per hour for design work and £95.00 per hour for technical work.
- 4.3 The Supplier is reliant upon the Customer to provide information to allow it to fulfil its obligations in respect of the delivery of the Services. The Customer has a responsibility to respond to any request and communicate with the Supplier within 5 working days of that request. The Supplier sends all requests for feedback and visual proofs via email and expects to be contacted within 24 hours of receipt, to ensure that the project schedule is maintained. Should the Customer fail to respond within 5 working days, the Supplier shall be entitled to treat this as a fundamental breach and shall be entitled to submit an invoice to the Customer for any and all remaining Charges to be paid in accordance with the Order.

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be on a time and materials basis, unless expressly varied by us with the agreement of the Customer:
- (a) the Charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Supplier's brochures and materials (available in literature format and electronically) at the time the Contract is formed;
 - (b) the Supplier's standard daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - (c) the Supplier shall be entitled to charge an overtime rate of 50 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1(b); and
 - (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.2 The Supplier reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within one weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving written notice of one week to the Customer.
- 5.3 The Supplier shall invoice the Customer on placing the Order in accordance with these Conditions as set out in the Order..
- 5.4 The Customer shall pay the remaining balance of each invoice submitted by the Supplier:
- (a) Within 7 days upon receipt of the invoice from the Supplier or in accordance with the Order as agreed between the Customer and the Supplier; and

- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 24 per cent per annum above the then current Lloyds TSB Bank PLC 's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 5.8 If we undertake work for a limited company (Company) we require a director of the company to agree to these Terms as guarantor (Guarantor) of the company's obligations to us in the following terms.
- 5.9 In consideration of our undertaking work for the Company, the Guarantor hereby unconditionally guarantees to us and our successors, transferees and assigns the due and punctual performance, observance and discharge by the Company of all its obligations and liabilities to the Supplier.
- 5.10 As an independent and primary obligation, without prejudice to the guarantee above, the Guarantor hereby unconditionally and irrevocably agrees to indemnify and keep indemnified the Supplier against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Supplier arising from failure by the Company to comply with any of its obligations or discharge any of its liabilities to the Supplier.
- 5.11 This guarantee and indemnity shall be a continuing guarantee and indemnity and shall continue in full force and effect until all liabilities of the Company have been paid, discharged or satisfied in full and notwithstanding any insolvency of the Company or any change in the status of the Company.
- 5.12 The Guarantor shall not be exonerated or discharged nor shall his or her liability be affected by any forbearance, whether as to payment, time, performance or otherwise howsoever or by any other indulgence given to the Company or by any act, thing, omission or means whatsoever which, but for this provision, might operate to exonerate or discharge the Guarantor from this guarantee and indemnity.
- 6. CREDIT FACILITIES AND LATE PAYMENT**
- 6.1 At the Supplier's discretion they may grant credit facilities to the Customer provided that the Customer satisfies any relevant criteria that the Supplier may reasonably require with regard to such creditworthiness.
- 6.2 The Customer hereby agrees to and authorises the Supplier to pass the Customer's personal information to credit reference agencies and that the Supplier may keep a record of any search that they do.
- 6.3 If the Supplier has granted credit facilities they reserve the right to withdraw those facilities at any time (without having to give reasons) and all outstanding invoices become due and payable immediately and in accordance with clause 5.

If the Supplier has granted the Customer credit facilities payment shall become due within the period agreed. Otherwise payment shall become due on the completion of work and before delivery or collection of the work is made in accordance with these Terms.

- 6.4 If the Supplier agrees to grant credit facilities to the Customer, this shall be offered on the following basis:
- (a) pay all amounts by the date they become due;
 - (b) not exceed any credit limit that we may apply to the Customer's account from time to time;
 - (c) make regular progress or stage payments on any order that takes longer than 28 days to complete;
 - (d) pay interest on amounts that are unpaid by their due date at a simple interest rate of 24% per annum and calculated on a daily basis from the date the Services were supplied in accordance with these Terms. If any amount or invoice becomes overdue then all invoices or amounts outstanding will become due and payable immediately and will be treated as being overdue items. Appropriate charges will then be applied and all costs reasonably incurred in collecting the whole debt (or any part of it) will be payable by the Customer.
- 6.5 In addition, at the Supplier's discretion when granting credit, they may insist that Customer:
- (a) pay a deposit or the full amount when the Order is placed; and/or
 - (b) make a payment to ensure that you do not exceed any credit limit that may be applied to the Customer's account (which shall include orders placed but not yet invoiced).
- 6.6 In addition, the Supplier will be entitled to:
- (a) notify the Customer from time to time of any changes to the dates by which amounts will become due, although any change will not apply to amounts already outstanding;
 - (b) add a finance charge to the total value of any invoice representing the interest that would accrue should that invoice be paid one month after its due date. However, if the Supplier does so it shall offer a cash discount of an amount equal to the finance charge if the Customer agrees to pay the invoice by its due date.
- 6.7 The Customer agrees that it shall indemnify the Supplier for the costs involved in pursuing any legal or debt collection actions against the Customer (including taking the advice of a solicitor or barrister, charges made by a debt recovery agency, or time spent and costs incurred by our employees and/or directors in preparing and pursuing that legal action) to recover monies owed by the Customer or from any third party who has given a guarantee or indemnity against any amounts owed by the Customer. The Customer also agrees that any legal proceedings shall be dealt with by the Court of Law in which a summons or writ has been issued by us. The Supplier shall be entitled to charge for storage and for loss of or wastage of resources that cannot otherwise be used by them if work is suspended or delayed by the Customer for whatever reason.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 7.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as

will entitle the Supplier to license such rights to the Customer and upon the Supplier receiving payment in full in accordance with these Conditions where appropriate..

- 7.3 All Supplier Materials are the exclusive property of the Supplier.
- 7.4 Unless negotiated and agreed in writing, the copyright of general artwork, commissioned artwork and illustrations and anything else whatsoever prepared, developed or created by the Supplier, shall vest in and belong to the Supplier until the Supplier has received payment in full in accordance with these Conditions where appropriate.
- 7.5 The Customer shall be responsible for obtaining all necessary authorities and consents to reproduce pictures, artwork, photographs, copyright text and/or any other reproducible materials.
- 7.6 The Customer shall indemnify the Supplier and its agents and representatives harmless against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements), losses and damages arising from or suffered or incurred by reason of any claim (including but not limited to the defence of such claim) relating to any Intellectual Property Rights that are not vested in the Customer which have been supplied by the Customer to the Supplier for the Order.
- 7.7 All reasonable efforts shall be made to obtain the best possible colour reproduction on Customer's Order but variation is inherent in the print process and it is understood and accepted as reasonable that, the Supplier shall not be required to guarantee an exact match in colour or texture between the Customer's photograph, transparency, proof, electronic graphic file, previously printed matter (whether printed by the Supplier or another party) or any other materials supplied by the Customer and the printed article the subject of the Customer's Order.
- 7.8 The Customer must ensure that copy, artwork and digital artwork supplied to the Supplier is 'camera-ready', 'RIP-ready' or final format is clear, legible, suitable for its intended purpose and in accordance with any specification that we may have published or notified to the Customer.
- 7.9 The Customer must also ensure that computer files and digital artwork supplied for the use in the production of artwork and/or printed work are suitable for the purpose for which they are intended, and that the Customer 'pre-flight' and thoroughly check those files to ensure their suitability.
- 7.10 The Supplier is not responsible for checking the accuracy of supplied input from an electronic file unless otherwise agreed in writing.
- 7.11 The Supplier may charge the Customer for any additional work they deem necessary where copy, artwork or files are not suitable for the purpose intended, whether supplied to the Supplier directly by the Customer or by a third party. If an electronic file is not suitable (without adjustment or other corrective action) for outputting on equipment that is normally adequate for such purposes, the Supplier may make an additional charge for any resulting additional costs incurred or may reject the file without prejudice to their right to payment for work done and/or material purchased.
- 7.12 The Customer is responsible for maintaining a copy of any original electronic files that they provide for the purposes of the Order. If the Customer supplies digital artwork then the Customer confirms and agrees that they are sufficiently knowledgeable about the technical aspects of the printing and graphic arts industry and its systems, procedures, practices, processes and production methods.
- 7.13 The Customer has an obligation to ensure that both they and their employees or agents are sufficiently knowledgeable about such matters and cannot rely on ignorance or doubt as a defence in any dispute or question that may arise.
- 7.14 The Supplier shall own the Intellectual Property Rights to any general artwork, commissioned artwork and illustrations and anything else whatsoever prepared, developed or created by them; the way in which a work is presented or designed; and the content material in any work where that content has been created by the Supplier (this excludes artwork created by the Customer where we merely make amendments

or alterations to that artwork at the Customer's request and where those amendments or alterations are slight or incidental in nature and do not change the substance of the original design).

- 7.15 The Supplier shall not have the Intellectual Property Rights to any material not created by them; or any proprietary logos, text, illustrations or photographs; supplied by the Customer or other third party copyright holders.
- 7.16 The Supplier shall unconditionally license the Customer to use, reproduce or reprint a design or work which we have undertaken for the Customer and for which the Supplier own the copyright provided that the original work has been paid for in full (taking into account Value Added Tax and any interest relating to late payment) and all other debts owing to us have been discharged. The Customer must not use a copyrighted design or work which the Supplier has undertaken for them to produce a new work or subsequent issue (or an amended past issue) without the Supplier's prior written permission. The Customer is responsible for obtaining all necessary authorities to reproduce pictures, photographs, artwork etc, and the Customer shall indemnify the Supplier and their agents from any liability that may arise from any claim arising thereof.
- 7.17 The Supplier may use any artwork or printing produced by them or a facsimile or copy of the Customer's work for produced for the purposes of the Order in any promotional material that is produced with the sole intention of promoting or furthering the Supplier's business. Unless the Customer expressly requests otherwise, the Supplier may include copies of such work with any promotional material that is distributed to third parties. All working materials (files, disks, papers, bromides, plates etc) used to create or maintain work which we have undertaken for you shall be exclusively owned by the Supplier.
- 7.18 The Supplier is not obliged to maintain copies of artwork or work which they have undertaken for the Customer either in an electronic format or in a hard copy format; or at any time to give their working materials (files, disks, papers, bromides, plates etc) or a copy of them to the Customer. All property supplied by the Customer to the Supplier shall, while it is in their possession or is in transit to or from the Customer or to the Customer's premises, be deemed to be at your risk. Whilst every care is taken, neither us, the Supplier or their agents can accept any responsibility or liability for loss or damage to artwork, photographs, transparencies or any other matter forming the basis of the Order.

8. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 8 shall survive termination of the Contract.

9. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or

- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Services.

9.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.4 This clause 9 shall survive termination of the Contract.

10. TERMINATION

10.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1(b) to clause 10.1(i) (inclusive);
 - (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 10.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party one months' written notice.
- 10.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment and also in the event that the Customer's behaviour is deemed rude, inappropriate or causes offence to an individual member, partner, director, employee, consultant or agent of the Supplier, then the Supplier can terminate this Contract forthwith and pursue their right to payment notwithstanding such termination in accordance with the provisions of this Contract.

11. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) The Customer shall immediately pay to the Supplier all of the Supplier's outstanding un-paid invoices and interest and, in respect of all Services agreed to be supplied in the Order but which have not yet been invoiced, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. GENERAL

12.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance

with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than two weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

12.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.3 Notices:

- (a) 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 to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, 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.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

12.4 Waiver:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12.5 Severance:

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

- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.
- 12.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

This section of our Conditions govern all of your dealings with us in the supply of Goods.

The customer's attention is drawn in particular to the provisions of clause 13.

13. INTERPRETATION

13.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 2.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Force Majeure Event: has the meaning given in clause 14.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's written acceptance of the Supplier's quotation, or as confirmed verbally by the Customer, or overleaf, as the case may be.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and the Supplier.

Supplier: The Smart Marketing and Media Group Limited (registered in England and Wales with company number 05069286).

13.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and e-mails.

14. BASIS OF CONTRACT

14.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 14.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 14.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 14.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 14.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures (whether literature or shown by electronic means) are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 14.6 A quotation or estimate for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 28 Business Days from its date of issue. The Supplier shall base the estimate on the current costs of production, and the Supplier reserves the right to amend the estimate at any time.
- 14.7 It is the Customer's sole responsibility to request an estimate before placing an Order, and to raise any specific concerns with the Supplier.
- 14.8 If the costs of the Goods has not been expressly agreed at or before the time an Order is placed the Supplier reserves the right to charge the Customer in accordance with their normal pricing structure (a copy of which is available upon request) and the Customer shall not subsequently dispute the costs incurred in relation to the Goods.

15. GOODS

- 15.1 The Goods are described in the Supplier's catalogue (whether in literature or advertised by electronic means) as modified by any applicable Specification.
- 15.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 15.2 shall survive termination of the Contract.
- 15.3 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 15.4 It is the Customer's responsibility to ensure that the specification or description of the product or service that they are ordering is correct and will meet your requirements. The Supplier is not responsible for checking whether or not the product or service that the Customer has asked the Supplier to supply is suitable for their purposes.

16. DELIVERY

- 16.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall

make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

- 16.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 16.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 16.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 16.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 16.6 If the Customer fails to take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 16.7 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 16.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers: up to and including the following percentages more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 16.9 When supplying printing products, there may be some variation between the quantity ordered and the quantity supplied which is inherent in the print process and it is therefore may not be possible for the Supplier to supply the exact number of copies of any item supplied as part of the Order and therefore, there may be minor variations in the quantity supplied.
- 16.10 Minor variations in the quantity supplied are not material to the Contract, and in order for the Supplier to maintain competitive prices and circumvent frivolous claims, no claim will be made by the Customer where the shortage in the order is not regarded as material for the purposes of this Contract. If a shortage is not material then the price for the Order shall not be affected and the Supplier shall not be required to make up that shortage.
- 16.11 The following are not material changes in the Order for the purposes of this Contract:
 - (a) Up to 1,000 a variation of up to 10%;
 - (b) Between 1001 and 5,000 a variation of up to 7%;

- (c) Between 5001 and 20,000 a variation of up to 5%, and;
 - (d) More than 20,000 a variation of up to 4%.
- 16.12 For variations where the shortage is material but is not more than twice the percentage levels specified above, a pro-rata credit may be issued or (at the Supplier's discretion) the Supplier shall endeavour to supply any shortage as soon as they are reasonably able to do so. For all other shortages, the Supplier shall use reasonable endeavours to supply any shortage as soon as they are reasonably able to do so. The Customer shall not be entitled to any form of credit, refund or reduction in price in respect of a shortage that is more than twice the percentage levels specified above and the Customer's sole remedy is a re-print of that shortage.
- 16.13 Printed and PDF proofs of all work may be submitted for Customer's approval and the Supplier shall incur no liability for any errors not corrected by the Customer in proofs submitted. Additional charges shall be made for any extra proofs that are necessary as a result of alterations required by the Customer. When style, type or layout is left to Supplier's discretion, any subsequent changes to such style, type or layout required by the Customer shall be subject to additional charges on a time and materials basis.
- 16.14 All work carried out, whether experimentally or otherwise, at the Customer's request, shall be chargeable at £75.00 per hour for design work and £95.00 per hour for technical work.
- 16.15 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 17. QUALITY**
- 17.1 The Supplier warrants that on delivery, the Goods shall:
- (a) conform in all material respects with their description and any applicable Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - (d) be fit for any purpose held out by the Supplier.
- 17.2 Subject to clause 17.3, if:
- (a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 17.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 17.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 17.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 17.2;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (f) the Goods differ from their description the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 17.4 Except as provided in this clause 17, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 17.1.
- 17.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 17.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 18. TITLE AND RISK**
- 18.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 18.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 18.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 24.2; and
 - (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time,
- but the Customer may resell or use the Goods in the ordinary course of its business.
- 18.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause , or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 19. BESPOKE GOODS**
- Goods that are personalised with a Customer's brand, logo and/or supplied artwork (menu covers, guest room folders, bill presenters, tariff boards, restaurant and hotel accessories, banners, signage, vehicle wraps, vehicle lettering, stationery, marketing

material and all other materials produced in a 'hard format', this list is not exhaustive) cannot be returned under any circumstance other than faulty or damaged. These orders are classified as bespoke / personalised products and the cost incurred in relation to the production of such goods shall be fully recoverable whether the Customer cancels their Order or not. Payment for Bespoke Goods is payable by one instalment for 100% of the Price prior to the Order being progressed.

20. CANCELLATION AND FAULTS

- 20.1 If Customer cancels an Order after the Supplier has commenced work, they shall be charged the full order value or such lower amount as the Supplier may (in their discretion) determine.
- 20.2 If goods are faulty or damaged the Customer must contact the Supplier (via email or telephone) within 7 days of receipt of the Goods. Further to inspection of the Goods, if they are found by the Customer's inspection team to be faulty then the Customer will be provided with a replacement or refunded in full.
- 20.3 Any problems reported after this time period the Supplier will not be liable for. If, for any other reason, the Customer wishes to return the Goods within 7 days of receiving the delivery please contact the Supplier (via email or telephone).
- 20.4 The Supplier will ask the Customer to return the item to them and on inspection that the Goods have not been damaged a refund will be made for the full item price.
- 20.5 The Customer will not have the right to cancel the Contract where the order is for Bespoke Goods.

21. INTELLECTUAL PROPERTY RIGHTS

- 21.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 21.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 21.3 Where we use Joomla or Virtuemart and all other third party components, you acknowledge and agree to comply with their terms of use and any licences that they may grant or have, and also all or any terms of use for them that there may be, we cannot be held responsible for any changes to the licence and/ terms of use that Joomla or Virtuemart or any other third party components may implement, and we cannot be held responsible for any direct or indirect losses that may occur as a result of such a change.
- 21.4 Unless negotiated and agreed in writing, the copyright of general artwork, commissioned artwork and illustrations and anything else whatsoever prepared, developed or created by the Supplier, shall vest in and belong to the Supplier.
- 21.5 The Customer shall be responsible for obtaining all necessary authorities and consents to reproduce pictures, artwork, photographs, copyright text and/or any other reproducible materials.
- 21.6 The Customer shall indemnify the Supplier and its agents and representatives harmless against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements), losses and damages arising from or suffered or incurred by reason of any claim (including but not limited to the defence of such claim) relating to any Intellectual Property Rights that are not vested in the Customer which have been supplied by the Customer to Supplier for the Order.
- 21.7 All reasonable efforts shall be made to obtain the best possible colour reproduction on Customer's Order but variation is inherent in the print process and it is understood and accepted as reasonable that, the Supplier shall not be required to guarantee an exact match in colour or texture between the Customer's photograph, transparency, proof, electronic graphic file, previously printed matter (whether printed by the

Supplier or another party) or any other materials supplied by the Customer and the printed article the subject of the Customer's Order.

- 21.8 The Customer must ensure that copy, artwork and digital artwork supplied to the Supplier is 'camera-ready', 'RIP-ready' or final format is clear, legible, suitable for its intended purpose and in accordance with any specification that we may have published or notified to the Customer.
- 21.9 The Customer must also ensure that computer files and digital artwork supplied for the use in the production of artwork and/or printed work are suitable for the purpose for which they are intended, and that the Customer 'pre-flight' and thoroughly check those files to ensure their suitability.
- 21.10 The Supplier is not responsible for checking the accuracy of supplied input from an electronic file unless otherwise agreed in writing.
- 21.11 The Supplier may charge the Customer for any additional work they deem necessary where copy, artwork or files are not suitable for the purpose intended, whether supplied to the Supplier directly by the Customer or by a third party. If an electronic file is not suitable (without adjustment or other corrective action) for outputting on equipment that is normally adequate for such purposes, the Supplier may make an additional charge for any resulting additional costs incurred or may reject the file without prejudice to their right to payment for work done and/or material purchased.
- 21.12 The Customer is responsible for maintaining a copy of any original electronic files that they provide for the purposes of the Order. If the Customer supplies digital artwork then the Customer confirms and agrees that they are sufficiently knowledgeable about the technical aspects of the printing and graphic arts industry and its systems, procedures, practices, processes and production methods.
- 21.13 The Customer has an obligation to ensure that both they and their employees or agents are sufficiently knowledgeable about such matters and cannot rely on ignorance or doubt as a defence in any dispute or question that may arise.
- 21.14 The Supplier shall own the Intellectual Property Rights to any general artwork, commissioned artwork and illustrations and anything else whatsoever prepared, developed or created by them; the way in which a work is presented or designed; and the content material in any work where that content has been created by the Supplier (this excludes artwork created by the Customer where we merely make amendments or alterations to that artwork at the Customer's request and where those amendments or alterations are slight or incidental in nature and do not change the substance of the original design).
- 21.15 The Supplier shall not have the Intellectual Property Rights to any material not created by them; or any proprietary logos, text, illustrations or photographs; supplied by the Customer or other third party copyright holders.
- 21.16 The Supplier shall unconditionally license the Customer to use, reproduce or reprint a design or work which we have undertaken for the Customer and for which the Supplier own the copyright provided that the original work has been paid for in full (taking into account Value Added Tax and any interest relating to late payment) and all other debts owing to us have been discharged. The Customer must not use a copyrighted design or work which the Supplier has undertaken for them to produce a new work or subsequent issue (or an amended past issue) without the Supplier's prior written permission. The Customer is responsible for obtaining all necessary authorities to reproduce pictures, photographs, artwork etc, and the Customer shall indemnify the Supplier and their agents from any liability that may arise from any claim arising thereof.
- 21.17 The Supplier may use any artwork or printing produced by them or a facsimile or copy of the Customer's work for produced for the purposes of the Order in any promotional material that is produced with the sole intention of promoting or furthering the Supplier's business. Unless the Customer expressly requests otherwise, the Supplier may include copies of such work with any promotional material that is distributed to third parties. All working materials (files, disks, papers, bromides, plates etc) used to

create or maintain work which we have undertaken for you shall be exclusively owned by the Supplier.

- 21.18 The Supplier is not obliged to maintain copies of artwork or work which they have undertaken for the Customer either in an electronic format or in a hard copy format; or at any time to give their working materials (files, disks, papers, bromides, plates etc) or a copy of them to the Customer. All property supplied by the Customer to the Supplier shall, while it is in their possession or is in transit to or from the Customer or to the Customer's premises, be deemed to be at your risk. Whilst every care is taken, neither us the Supplier or their agents can accept any responsibility or liability for loss or damage to artwork, photographs, transparencies or any other matter forming the basis of the Order.

22. PRICE AND PAYMENT

- 22.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 22.2 The Supplier may, by giving notice to the Customer at any time up to 3 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 22.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 22.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 22.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 22.6 The terms of payment are as set out in the Order. The Supplier may at its own discretion request that a deposit be paid which could be anything up to the full price payable for the Goods. In the event that a deposit is requested, it shall be non-refundable.
- 22.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds TSB Bank PLC 's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 22.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

23. CREDIT FACILITIES AND LATE PAYMENT

- 23.1 At the Supplier's discretion they may grant credit facilities to the Customer provided that the Customer satisfies any relevant criteria that the Supplier may reasonably require with regard to such creditworthiness.
- 23.2 If the Supplier has granted credit facilities they reserve the right to withdraw those facilities at any time (without having to give reasons) and all outstanding invoices become due and payable immediately and in accordance with clause 7. If the Supplier has granted the Customer credit facilities payment shall become due within the period agreed. Otherwise payment shall become due on the completion of work and before delivery or collection of the work is made in accordance with these Terms.
- 23.3 If the Supplier agrees to grant credit facilities to the Customer, this shall be offered the following basis:
- (a) pay all amounts by the date they become due;
 - (b) not exceed any credit limit that we may apply to the Customer's account from time to time;
 - (c) make regular progress or stage payments on any order that takes longer than 28 days to complete;
 - (d) pay interest on amounts that are unpaid by their due date at a simple interest rate of 24% per annum and calculated on a daily basis from the date of despatch of the Goods or the date on which the Goods were made available for collection in accordance with these Terms. If any amount or invoice becomes overdue then all invoices or amounts outstanding will become due and payable immediately and will be treated as being overdue items. Appropriate charges will then be applied and all costs reasonably incurred in collecting the whole debt (or any part of it) will be payable by the Customer.
- 23.4 In addition, at the Supplier's discretion when granting credit, they may insist that Customer:
- (a) pay a deposit or the full amount when the order is placed or at some time before the Goods are delivered or collected; and/or
 - (b) make a payment to ensure that you do not exceed any credit limit that may be applied to the Customer's account (which shall include orders placed but not yet invoiced).
- 23.5 In addition, the Supplier will be entitled to:
- (a) notify the Customer from time to time of any changes to the dates by which amounts will become due, although any change will not apply to amounts already outstanding;
 - (b) add a finance charge to the total value of any invoice representing the interest that would accrue should that invoice be paid one month after its due date. However, if the Supplier does so it shall offer a cash discount of an amount equal to the finance charge if the Customer agrees to pay the invoice by its due date.
- 23.6 The Customer agrees that it shall indemnify the Supplier for the costs involved in pursuing any legal or debt collection actions against the Customer (including taking the advice of a solicitor or barrister, charges made by a debt recovery agency, or time spent and costs incurred by our employees and/or directors in preparing and pursuing that legal action) to recover monies owed by the Customer or from any third party who has given a guarantee or indemnity against any amounts owed by the Customer. The Customer also agrees that any legal proceedings shall be dealt with by the Court of Law in which a summons or writ has been issued by us. The Supplier shall be entitled to charge for storage and for loss of or wastage of resources that cannot otherwise be used by them if work is suspended or delayed by the Customer for whatever reason.

24. CUSTOMER'S INSOLVENCY OR INCAPACITY

24.1 If the Customer becomes subject to any of the events listed in clause 12.1, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

24.2 For the purposes of clause 12.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 24.2(a) to clause 24.2(h) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

24.3 In the event that the Customer's behaviour is deemed rude, inappropriate or causes offence to an individual member, partner, director, employee, consultant or agent of the Supplier, then the Supplier can terminate this Contract forthwith and pursue their right to payment notwithstanding such termination in accordance with the provisions of this Contract.

24.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

25. LIMITATION OF LIABILITY

25.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

25.2 Subject to clause 13.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

26. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

27. GENERAL

27.1 Assignment and subcontracting.

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

27.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case)

or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a) ; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

27.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (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 Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

27.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract 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 such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

27.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

27.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

27.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

This section of our Conditions govern all of your dealings with us in the supply of Website Designs and Website Hosting.

28. INTERPRETATION

28.1 The definitions and rules of interpretation in this clause apply in this agreement.

Acceptance: the acceptance or deemed acceptance of the Site by the Customer pursuant to clause 31.

Acceptance Tests: the tests to be carried out on the Site as set out in clause 31 and as described in the Order.

Business Day: any day (other than a Saturday or Sunday) when banks are generally open for normal business in London.

Change Control Procedures: the procedures set out in the Order.

Charges: the charges in respect of the Services set out in the Order, together with any charges arising from the Change Control Procedures.

Confidential Information: has the meaning given in clause 43.1.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 1.3.

Design Agency: The Smart Marketing and Media Group Limited (CRN 05069286).

Force Majeure Event: has the meaning given in clause 42.1.

Intellectual Property Rights: all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

Materials: the content provided to the Supplier by the Customer from time to time for incorporation in the Site.

Non-Supplier Defects: those defects described in clause 31.4.

Order: the Customer's order for the Site and the Services, as set out in the Customer's written acceptance of the Supplier's quotation, or as confirmed verbally by the Customer, or overleaf, as the case may be.

Phase: in relation to the Project Plan, one of the key phases of work identified in the Project Plan.

Project: the provision by the Supplier of the Services as set out in these Conditions.

Project Plan: the timetable within which the Supplier will implement the Project as set out in the Order.

Server: a computer server administered by the Supplier as more particularly defined in the Order.

Services: the design and development services to be provided pursuant to this agreement as set out in the Order.

Site: the website to be hosted by the Supplier pursuant to these Conditions.

Site Software: the software for the Site commissioned by the Customer as specified in the Order.

Site Specification: the specification for the Site set out in the Order.

Supplier: The Smart Marketing and Media Group Limited (CRN 05069286).

Third Party Products: those third party software products set out in the Order.

Visitor: a visitor to the Site.

28.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and e-mails.

28.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

28.4 The Order constitutes an offer by the Customer to purchase the Site and Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

28.5 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

28.6 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

29. SCOPE OF THE PROJECT

29.1 The Supplier shall:

- (a) liaise with the Design Agency in developing the look and feel of the Site;
- (b) design, develop and deliver the Site in three Phases in accordance with the Project Plan; and
- (c) provide the Services and host the Site from the Server.

29.2 Domain names are registered in your own legal name unless otherwise requested.

29.3 Ownership of title of domain names are passed upon full and final payment being received.

30. CUSTOMER RESPONSIBILITIES

30.1 The Customer acknowledges that the Supplier's ability to provide the Services is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of the design specifications provided by the Design Agency and any information and data the Customer provides to the Supplier. Accordingly, the Customer shall:

- (a) provide the Supplier with access to, and use of, all information, data and documentation reasonably required by the Supplier for the performance by the Supplier of its obligations under this agreement; and
- (b) instruct and manage the Design Agency.

30.2 The Customer shall be responsible for the accuracy and completeness of the Materials on the Site in accordance with clause 38.

31. DEVELOPMENT AND ACCEPTANCE OF SITE

- 31.1 Once the Supplier has completed the design and development of the Site in accordance with the relevant Phase of the Project Plan, the Supplier shall run the Acceptance Tests. The procedure set out in this clause 31 shall be repeated in respect of all relevant Phases and any further development works agreed by the parties from time to time.
- 31.2 The Acceptance Tests shall test compliance of the Site with the Site Specification. The form and detail of such tests is set out in the Order.
- 31.3 Acceptance of the Site shall occur when the Site has passed the Acceptance Tests. The Supplier shall notify the customer when the tests have been passed and provide the results of the Acceptance Tests to the Customer in writing.
- 31.4 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom the Supplier has no responsibility (**Non-Supplier Defect**), the Site shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. The Supplier shall provide assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products. The Customer shall pay the Supplier in full for all such additional services and products at the Supplier's then current fees and prices.
- 31.5 Acceptance of the Site shall be deemed to have taken place upon the occurrence of any of the following events:
- (a) the Customer uses any part of the Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
 - (b) the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of seven working days from the date on which the Supplier is ready to commence running such Acceptance Tests or retests.
- 31.6 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom the Supplier has no responsibility (Non-Supplier Defect), the Site shall be deemed to have passed the Acceptance Tests notwithstanding such NonSupplier defect. The Supplier shall provide assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products. The Customer shall pay the Supplier in full for all such additional services and products at the Supplier's then current fees and prices.
- 31.7 31.7 Acceptance of the Site shall be deemed to have taken place upon the occurrence of any of the following events:
- (a) the Customer uses any part of the Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
 - (b) the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of seven working days from the date on which the Supplier is ready to commence running such Acceptance Tests or retests; or
 - (c) the Customer signs the Acceptance Form.
 - (d) the customer pays the final balance of the project.
- 31.8 Once Acceptance of the Site has taken place in accordance with this clause 31, any further Services requested by the Customer will be subject to further charges to be agreed between the Customer and the Supplier. Notwithstanding that, the Supplier will provide support for the Site against faults caused by changes to the platform, software or system, or as a result of a security breach or hacking, that are beyond the control of the Customer for a period of 3 months from the date of Acceptance.

32. THIRD PARTY PRODUCTS

The Third Party Products shall be supplied in accordance with the relevant licensor's standard terms. The one-off licence fee for such Third Party Products is included in the Charges payable pursuant to clause 34.1.

33. PROJECT MANAGEMENT

33.1 Each party shall appoint a project manager who shall:

- (a) provide professional and prompt liaison with the other party; and
- (b) have the necessary expertise and authority to commit the relevant party.

34. CHARGES AND PAYMENT

34.1 The Supplier reserves the right to change the price of Services and the costs of the Site at any time.

34.2 When the Supplier accept your order we will confirm the total price that you will be asked to pay a deposit by way of either BACS transfer, cheque or Debit Card.

34.3 Any quotation for the Services and Site costs will be valid for 28 days from date of quotation.

34.4 If you live in the United Kingdom you will be required to pay at least 50% of the price for the Site and Services in advance. The balance within 7 days of work being completed. If you live outside the United Kingdom we require you to pay for the Services and the Site in full by the method referred to in this Condition, in advance.

34.5 Payment for Websites and Web Based Systems become due when the site or system is completed in accordance with your Order specification, this is before training, and before the Customer is given full access to edit and upload your own products and content.

34.6 Hosting charges become applicable on the start date of the service. Where a free hosting period is provided, the start date commences from the date that the client is given access to populate the website, or provided with training, whichever is the soonest.

34.7 Payment may not be withheld by the Customer to populate your website, in the event you do withhold payment to populate your website admin handling charges of £75 per day plus VAT thereon will become payable. Any deposit paid will be nonreturnable unless the Supplier cancels the Order in accordance with these Conditions.

34.8 In the event of non-payment for the Services and the Site, the Supplier reserves the right to suspend all services and websites you hold with us until all outstanding payments are received without further notice.

34.9 All Charges are exclusive of VAT.

34.10 If the Customer fails to pay any amount payable by it under this agreement, the Supplier shall be entitled, but not obliged, to charge the Customer interest on the overdue amount. Such interest shall be payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 24% per annum above the base rate for the time being of Lloyds TSB Bank PLC. Such interest shall accrue on a daily basis and be compounded quarterly. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

35. WARRANTIES

35.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.

35.2 The Supplier shall perform the Services with reasonable care and skill.

35.3 The Supplier warrants that the Site will perform substantially in accordance with the Site Specification for a period of three months from Acceptance. If the Site does not

- so perform, the Supplier shall, for no additional charge, carry out any work necessary in order to ensure that the Site substantially complies with the Site Specification.
- 35.4 The warranty set out in clause 35.3 shall not apply to the extent that any failure of the Site to perform substantially in accordance with the Site Specification is caused by any Materials.
- 35.5 The Supplier agrees to supply an analytics system for your website.
- 35.6 The Supplier is not obliged to keep any data collected by analytics systems.
- 35.7 Analytics data will not be made available to any other companies without the express consent of the client.
- 35.8 The Supplier will provide a backup solution for the 1st 12 months for any website that is hosted on our servers. We recommend that clients keep a copy of their website for backup purposes. The Supplier will not be held responsible for a total loss of service or website.
- 35.9 The Supplier provides hosting packages on the following basis and variants only apply if supplied in writing and signed by a director of the company:
- (a) Up to 2GB of data storage.
 - (b) Website systems have a 5GB transfer per month limit. Exceeding this limit will incur additional charges.
- 35.10 The Supplier will provide technical support via e-mail and telephone for all web hosting and technical related enquiries that involve the Customer website's interaction with our servers. This excludes off-site hosting, external applications and any third-party software that communicates with our servers.
- 35.11 FTP access is not granted as standard and is available by application as an upgrade and is also subject to separate terms and conditions of use.
- 35.12 1 hours telephone training is supplied as standard with all systems, This is accompanied by a training manual. Additional hours of training are chargeable at £90 per hour. 2 hours of telephone training is supplied with an Ecommerce website.
- 35.13 Instruction manuals are provided in PDF format for websites and website systems. Additional bespoke functionality is not included in user manuals as standard.
- 35.14 Any Customers hosted on the Supplier's web or email servers are responsible for ensuring all communications sent, received or stored on the Supplier's web or email servers are scanned for viruses, malware or malicious content prior to arrival or dispatch. Any disruption caused by viruses, malware or malicious content on a user's account will result in an immediate suspension of services pending investigation. If your account is deemed to be unsafe and in fact the cause of the disruption, you will incur an unspecified additional charge for the time spent in diagnosing and repairing the problem. Any files stored on your web or email servers that are known or made to be known to cause problems such as excessive bandwidth usage, e-mail spam or be malicious in any other way that may affect other clients hosted on the same server; those files will be deleted by our administrators without warning.
- 35.15 Websites with current data transfer of above 5GB per month moving to the Supplier need to notify the Supplier so that the correct tariff can be selected.
- 35.16 Charges may apply for website transfers and additional licences may need to be purchased for the website systems to work on the server to be transferred to, if the server does not have the correct software installed. The Supplier recommends that all website owners subscribe to PCI DSS scanning. The Supplier accepts no responsibility or liability of noncompliance of PCI DSS unless a PCI DSS contract is required.
- 35.17 Transfer from the Supplier hosting can be done by sending a transfer request. This must be received by us at least 30 days prior to the renewal of the Customer annual hosting agreement. Failure to notify the Supplier before 30 days will result in the annual charge being charged in full.

- 35.18 The Supplier aims to deliver the very highest possible levels of server up-time. The Server Hardware, and service infrastructure, including Power and Network Connectivity will be available for 99.9% of the time (excluding scheduled maintenance) advance notice of which will be given wherever possible).
- 35.19 In the event of an outage to one of these service components which results in server downtime, Customers may be entitled to claim a service credit of one day's service fee for every hour that the server is unavailable, depending upon the outage circumstances ("Service Level Agreement Claims"). The period of the outage will be measured from the time you report the problem to our confirmation of restoration of service. Service Level Agreement Claims may be made up to a maximum of one month's service fee in any calendar month.
- 35.20 Outages caused by third party software installations, or other modifications to the default operating system as deployed do not fall within the terms of these Conditions and Service Level Agreement Claims.
- 35.21 These Conditions sets out the full extent of the Supplier's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

36. LIMITATION OF REMEDIES AND LIABILITY

- 36.1 Nothing in this agreement shall operate to exclude or limit the Supplier's liability for:
- (a) death or personal injury caused by its negligence; or
 - (b) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (c) fraud; or
 - (d) any other liability which cannot be excluded or limited under applicable law.
- 36.2 The Supplier shall not be liable to the Customer for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 36.3 Subject to clause 36.1, the Supplier's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 50% of the total Charges payable by the Customer to the Supplier under this agreement in that calendar year.

37. INTELLECTUAL PROPERTY RIGHTS

- 37.1 All Intellectual Property Rights in the Site (including in the content of the Site and the Site Software, but excluding the Materials, arising in connection with this agreement shall be the property of the Supplier, and the Supplier hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Site.
- 37.2 Where we use Joomla or Virtuemart or any other third party components, you acknowledge and agree to comply with their terms of use and any licences that they may grant or have, and also all or any terms of use for them that there may be, we cannot be held responsible for any changes to the licence and/ terms of use that Joomla or Virtuemart or any other third party components may implement, and we cannot be held responsible for any direct or indirect losses that may occur as a result of such a change.
- 37.3 The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.
- 37.4 The Supplier shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the Site infringes any Intellectual

Property Rights of a third party in the UK, other than infringements referred to in clause 37.3.

37.5 The indemnities in clause 37.3, clause 37.4 and clause 38.4 are subject to the following conditions:

- (a) the indemnified party promptly notifies the indemnifier in writing of the claim;
- (b) the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;
- (c) the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and
- (d) the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

37.6 The indemnities in clause 37.3, clause 37.4, clause 38.4 and clause 38.5 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

38. SITE CONTENT

38.1 The Supplier shall update the Site with Materials provided from time to time by the Customer. The Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**).

38.2 The Supplier shall grant the Customer access to the Server in order to update information held on the Site.

38.3 The Supplier shall include only Materials on the Site. The Customer acknowledges that the Supplier has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. The Supplier reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. The Supplier shall notify the Customer promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.

38.4 The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.

38.5 The Supplier may include the statement "Designed by The Smart Marketing and Media Group" on the home page of the Site in a form to be agreed and the Customer shall bear all reasonable costs incurred by the Supplier in the event that they request the removal of such a statement from the Site.

39. DATA PROTECTION

39.1 The Supplier warrants that, to the extent it processes any Personal Data on behalf of the Customer:

- (a) it shall act only on instructions from the Customer; and
- (b) it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

39.2 In this clause 39, **Personal Data** has the meaning given in the Data Protection Act 1998.

40. TERM AND TERMINATION

40.1 Either party may terminate this agreement immediately at any time by written notice to the other party if:

- (a) that other party commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 20 days after the

service of written notice specifying the breach and requiring it to be remedied;
or

(b) that other party:

- (i) ceases to trade (either in whole, or as to any part or division involved in the performance of this agreement); or
- (ii) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or
- (iii) a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or
- (iv) the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
- (v) any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).
- (vi) and also in the event that the Customer's behaviour is deemed rude, inappropriate or causes offence to an individual member, partner, director, employee, consultant or agent of the Supplier, then the Supplier can terminate this Contract forthwith and pursue their right to payment notwithstanding such termination in accordance with the provisions of this Contract.

40.2 On termination of this agreement by the Supplier pursuant to clause 13.1, all licences granted by the Supplier under this agreement shall terminate immediately.

40.3 On expiry or termination of this agreement otherwise than on termination by the Supplier pursuant to clause 13.1, the Supplier shall promptly return all Materials to the Customer, and shall provide to the Customer an electronic copy of the Site (including all content on the Site). The Supplier shall provide such assistance as is reasonably requested by the Customer in transferring the hosting of the Site to the Customer or another service provider, subject to the payment of the Supplier's expenses reasonably incurred.

40.4 On expiry or termination of this agreement, all provisions of this agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

41. CHANGE CONTROL

Any request to change the scope of the Services shall be processed in accordance with the Change Control Procedure.

42. FORCE MAJEURE

42.1 The definition in this clause applies in this agreement.

Force Majeure Event: any event arising which is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war).

42.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take reasonable steps to mitigate the effect of the Force Majeure Event.

43. CONFIDENTIALITY

43.1 The definition in this clause applies in this agreement.

Confidential Information: all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

43.2 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

43.3 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

43.4 The obligations set out in this clause 43 shall not apply to Confidential Information which the receiving party can demonstrate:

- (a) is or has become publicly known other than through breach of this clause 43; or
- (b) was in possession of the receiving party prior to disclosure by the other party; or
- (c) was received by the receiving party from an independent third party who has full right of disclosure; or
- (d) was independently developed by the receiving party; or
- (e) was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

43.5 The obligations of confidentiality in this clause 43 shall not be affected by the expiry or termination of this agreement.

44. NOTICES

44.1 A notice given under this agreement:

- (a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);
- (b) shall be sent for the attention of the person, and to the address, fax number or e-mail address given in this clause 44 (or such other person, address, fax number or e-mail address as the receiving party may have notified to the other, such notice to take effect five days from the notice being received); and
- (c) shall be:
 - (i) delivered personally; or
 - (ii) sent by fax or e-mail; or
 - (iii) sent by pre-paid first-class post, recorded delivery or registered post; or
 - (iv) (if the notice is to be served or posted outside the country from which it is sent) sent by registered airmail.

44.2 The addresses for service of notice are to be sent via fax, email or post to the relevant parties as such details are supplied to the other on the Order. For the avoidance of doubt, notice shall be deemed to have been served on the Customer by the Supplier if sent to the Customer's address as referred to in the Order.

- 44.3 A notice is deemed to have been received:
- (a) if delivered personally, at the time of delivery; or
 - (b) in the case of fax or e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next Business Day; or
 - (c) in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
 - (d) in the case of registered airmail, five days from the date of posting; or
 - (e) if deemed receipt under the previous paragraphs of this clause 44.3 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

44.4 To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number or e-mail address of the relevant party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

45. PUBLICITY

All media releases, public announcements and public disclosures by either party relating to this agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved jointly by the parties prior to release.

46. ASSIGNMENT

Neither party may assign or transfer any of its rights or obligations under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

47. ENTIRE AGREEMENT

Except as provided in this clause 47, neither party shall have any remedy in respect of any untrue statement (whether written or oral) made to it on which it relied in entering into this agreement (**Misrepresentation**), and neither party shall have any liability other than pursuant to the express terms of this agreement. Nothing in this agreement shall exclude or limit either party's liability for any Misrepresentation made fraudulently. Each party's liability for Misrepresentation as to a fundamental matter, including as to a matter fundamental to that party's ability to perform its obligations under this agreement, shall be subject to the limit set out in clause 9.3.

48. THIRD PARTY RIGHTS

This agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.

49. VARIATION AND WAIVER

49.1 A variation of this agreement shall be in writing and signed by or on behalf of both parties to this agreement.

49.2 A waiver of any right under this agreement is only effective if it is in writing, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

49.3 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

50. SEVERANCE

50.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

50.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

51. GOVERNING LAW AND JURISDICTION

51.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

51.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.