



Studio Publica Limited Terms and Conditions of Supply

1 APPLICATION

- 1.1 All Services and Deliverables supplied by the Supplier are supplied subject to these Terms and Conditions as follows:
- 1.1.1 The provisions of Part I apply to the provision of all and any Services and Deliverables;
- 1.1.2 The provisions of Part II apply to the provision of brand design services, including brand concepts, illustration and print design;
- 1.1.3 The provisions of Part III apply to the provision of website hosting services;
- 1.1.4 The provisions of Part IV apply to the provision of website design and development services;
- 1.1.5 The provisions of Part V apply to the provision of software development services (other than website development services);
- 1.1.6 The provisions of Part VI apply to the provision of post-development support and maintenance services for websites and software developed by the Supplier.
- 1.2 Any reference to "Services" or "Deliverables" in Parts II to VI is a reference to the specific Services or Deliverables provided pursuant to that Part as specified in the Services Agreement.

PART I – GENERAL

2 DEFINITIONS

- 2.1 In the Agreement:
- 2.1.1 Address means the address, premises, site, or location where the Deliverables are to be delivered and/or the Services provided by the Supplier, being the Client's address specified in the Services Agreement or otherwise agreed in writing between the Supplier and the Client.
- 2.1.2 Agreement means the terms set out in any written agreement between the Supplier and the Client for the supply of Services and Deliverables to the Client, including any Services Agreement, and these Terms and Conditions.
- 2.1.3 Client means the person to whom the Services and Deliverables are to be supplied.
- 2.1.4 Client's Materials means all data, graphics, pictures, trademarks, software, website banners, website design & development, advertising, brochures and other materials incorporated or to be incorporated into the Client's Website, including but not limited to user data generated by the operation of the Client's Website, but excluding anything created or developed by the Supplier in providing the Services.
- 2.1.5 Client's Website means the Website of the Client as specified in the Services Agreement.
- 2.1.6 Commencement Date means the commencement date of the relevant services (if any) as specified in the Services Agreement.
- 2.1.7 Deliverable means an item to be delivered by the Supplier in the course of providing the Services which is specified in the Services Agreement and (for the avoidance of doubt) may include software.
- 2.1.8 Delivery means delivery of the Services and Deliverables in accordance with the Agreement.
- 2.1.9 Developed Software means any software to be specifically written and developed by the Supplier for the Client pursuant to the Agreement.
- 2.1.10 Existing IP means all Intellectual Property which is owned by or proprietary to, a party to the Agreement as at the date of the Agreement or developed by (or on behalf of) a party other than pursuant to the Agreement.
- 2.1.11 Intellectual Property means any and all intellectual and industrial property rights throughout the world including but not limited to rights in respect of, or in connection with copyright (including future copyright) and rights in the nature of, or analogous to, copyright, trade marks, inventions (including patents), any

- confidential information, service marks, designs, circuit layouts, rights in databases, and rights in internet domain names and website addresses, whether or not existing now and whether or not registered or registrable and includes any right to apply for registration of such rights and includes all renewals and extensions.
- 2.1.12 Price means:
- (a) where a price is specified in the Services Agreement, the price for the work recorded in the Services Agreement;
- (b) otherwise, the Supplier's usual charges for completing the work;
- (c) Plus any additional charges pursuant to these terms and conditions, plus GST.
- 2.1.13 Prohibited Content means any content on a Website that is or could reasonably be considered to be
- (a) in breach of the Consumer Guarantees Act 1993, Fair Trading Act 1993, or any other applicable law or applicable industry code;
- (b) misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
- (c) in breach of any person's Intellectual Property.
- 2.1.14 Secured Products means the products referred to in clauses 13.4.1 to 13.4.3.
- 2.1.15 Service Levels means the service levels for the provision of the relevant Services (if any) as specified in the Services Agreement.
- 2.1.16 Services means the services to be provided by the Supplier to the Client, as specified in the Services Agreement
- 2.1.17 Services Agreement means each document entitled "Services Agreement" entered into by the Supplier and the Client pursuant to which the Supplier agrees to provide specific Services or Deliverables to the Client.
- 2.1.18 Specifications means any specifications applying to the provision of the Services and Deliverables, as specified in the Services Agreement.
- 2.1.19 Supplier means Studio Publica Limited and its successors and assigns.
- 2.1.20 Supplier Process IP means all Intellectual Property in the Supplier's processes, systems, methodology and practices and in the components of any Deliverable that the Supplier is able to utilise and anticipates utilising (either in its current form or in an adapted or modified form) in its business (including for the purpose of providing services and/or deliverables to any third party). For the avoidance of doubt, this definition shall not extend to any actual Deliverable in respect of which ownership shall expressly vest in the Client pursuant to the Agreement.
- 2.1.21 Supplier's Authorised Representative means the person (or class of persons) named as the Supplier's Authorised Representative in the Services Agreement or otherwise notified to the Client in writing, or any replacement person advised by the Supplier from time to time by written notice to the Client.
- 2.1.22 Terms and Conditions means these terms and conditions of supply as may be amended by the Supplier from time to time.
- 2.1.23 Testing Phase means the period of 2 weeks from Delivery during which the Client must conduct a thorough check of the Deliverable to ensure that it performs in accordance with the Specifications.
- 2.1.24 Third Party Software is any software sold or licensed to the Client either by a third party supplier direct, or indirectly through the supply of a Deliverable by the Supplier under this Agreement. Such Third Party Software may be used in connection with or integrated with the Services and Deliverables supplied by the Supplier under the Agreement.
- 2.1.25 Website means a location which is accessible on the world wide web and which provides multimedia content via a graphical user interface.

- 2.1.26 Work includes all Services and Deliverables supplied or required to be supplied by the Supplier in the course of performance of the Agreement.

3 ACCEPTANCE OF TERMS & CONDITIONS

- 3.1 Unless the parties specifically agree otherwise in writing these Terms and Conditions shall apply to the supply and/or performance of all Services and/or Deliverables from the Supplier to the Client, to the exclusion of the Client's standard terms and conditions (if any). Contracting with the Supplier to carry out Work (including entry into any Services Agreement) or acceptance of a quote provided by the Supplier constitutes acceptance by the Client of these Terms and Conditions.
- 3.2 Where more than one Client has entered into the Agreement, the Clients shall be jointly and severally liable for all payments of the Price and performance of all obligations under the Agreement.
- 3.3 The Supplier is not bound by any statements or representations that are not recorded in the Agreement or otherwise notified to the Client in writing by the Supplier's Authorised Representative.
- 3.4 The Client undertakes to give the Supplier at least 14 days' prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's Address, contact details or business practice).

4 SERVICES AND DELIVERABLES

- 4.1 The Supplier will supply the Services to the Client and produce the Deliverables in accordance with the Specifications and otherwise in accordance with the terms of the Agreement.
- 4.2 The Supplier will use reasonable endeavours to provide the Services in accordance with any dates and times specified in the Agreement. The Supplier will ensure that any key milestones are achieved by the key milestone dates (if any) specified in the Agreement.

5 QUOTES

- 5.1 All quotes are provided strictly on the following basis:
- 5.1.1 Quotes are only binding on the Supplier if they are accepted by the Client in writing within 21 days of the quote being provided to the Client;
- 5.1.2 That the work to be completed to which the quote relates will proceed in the usual course and there are no unforeseen difficulties or delays with the Work; and
- 5.1.3 If additional work is required that could not be foreseen by the Supplier at the time of providing the quote, then the Supplier may at its option either cancel the Agreement or charge for such additional work at the Supplier's usual rate.

6 PRICE

- 6.1 All Services and Deliverables are supplied at the Price applicable as at date the Services or Deliverables are supplied. The Supplier reserves the rights to pass on to the Client any change in Price after the date of any quote.
- 6.2 All Prices as quoted are exclusive of goods and services tax unless otherwise stated. Goods and services tax is (where applicable) payable by the Client.
- 6.3 Unless otherwise stated, the Prices are exclusive of delivery costs. Delivery costs are payable by the Client.

7 VARIATIONS AND ADDITIONAL SERVICES

- 7.1 No variations to the Work originally contracted for (including changes to the scheduled work, Specifications or content) shall be carried out without the agreement of both the Client and the Supplier. Where the Client and the Supplier have

- agreed to a variation the Supplier will be entitled to charge for the work involved in such variation at the Supplier's usual rate.
- 7.2 Where the Client requests the Supplier to provide services in addition to the Services, the Supplier will be entitled to charge for the work involved in the provision of those additional services at the Supplier's usual rate.
- 8 INVOICING AND PAYMENT**
- 8.1 Unless otherwise recorded in the Services Agreement, prior to completion of the Work, the Supplier may issue interim invoices to the Client at intervals of no less than 1 month for the Services performed up to the date specified in the invoice (including any variations).
- 8.2 Unless otherwise recorded in the Services Agreement, all invoices issued by the Supplier to the Client are payable by the date specified on the invoice, time being of the essence. Where no date for payment is specified, payment must be made within 7 days of the date of the invoice.
- 8.3 The Supplier may, at its discretion, require a deposit to be paid by the Client. Where a deposit is required, the Supplier is not obliged to commence work until receipt of the deposit.
- 8.4 Any variation from the payment terms above must have the prior written approval of the Supplier.
- 8.5 The Client is not entitled to retain any funds unless expressly agreed in writing with the Supplier prior to the commencement of any Works.
- 8.6 The Client is not entitled to set off against, or deduct from the Price (or any invoice) any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 8.7 If full payment is not made by the Client to the Supplier in accordance with clause 8.2 above then the Client will be in default under the Agreement and the Supplier may exercise all of the rights and remedies set out in the Agreement and otherwise available at law; and
- 8.7.1 the Client will pay interest on the default monies at the rate of 2.5% per month payable on a daily basis from the due date, and such interest will accrue after as well as before any judgement; and
- 8.7.2 the Client will be liable for all expenses (including solicitor - own client legal costs) incurred by the Supplier as a result of the default; and
- 8.7.3 the Supplier may withhold Delivery of the Deliverables and Services; and
- 8.7.4 the Supplier may suspend the Works; and
- 8.7.5 the Supplier may withhold the further supply of Services and Deliverables.
- 8.8 If any amount remains unpaid 60 days from the date of the relevant invoice, an immediate amount of \$20.00 or 10% of the amount overdue (whichever is greater) will be levied against the Client for administration fees, which sum will become immediately due and payable in addition to the interest payable under clause 8.7.1.
- 8.9 If the Client's payment is dishonoured for any reason the Client will be liable for any dishonour fees or other costs incurred by the Supplier in relation to the payment.
- 9 VALIDITY OF PAYMENT**
- 9.1 The Client acknowledges that:
- 9.1.1 all payments made to the Client's account with the Supplier are in the ordinary course of the Client's business; and
- 9.1.2 all payments to the Client's account are received by the Supplier on the reasonably held belief that those payments are valid unless the Client advises otherwise in writing; and
- 9.1.3 by accepting any payments on or after the due date for payment the Supplier has altered its position in reliance on the validity of those payments.
- 10 SUBCONTRACTING**
- 10.1 The Supplier may license or sub-contract all or any part of the Work or any of its other rights or obligations under the Agreement without the Client's consent.
- 11 INFORMATION**
- 11.1 The Client is responsible for ensuring that any

- designs, specifications, information or instructions supplied by the Client (or the Client's agent) are clear and correct in every particular and meet the Client's requirements and purposes whether or not the same have been communicated to the Supplier. The Client shall indemnify and hold harmless the Supplier in respect of any liability, loss, injury, damage, demand, cost, charge or expense which may be incurred or sustained by the Supplier by reason of or arising directly or indirectly out of any claim in respect of any omission, inaccuracy, ambiguity or illegibility in respect of any such designs, specifications or information or otherwise in relation thereto.
- 12 LIABILITY**
- 12.1 Any claim by the Client against the Supplier in respect of the Services or Deliverables supplied must be raised in accordance with the procedures in Parts II to VI as appropriate for the Services or Deliverables in question.
- 12.2 Where the Supplier has accepted the Client's claim, the Supplier reserves the right in its discretion to either replace or correct the Services or Deliverables. If the Supplier reasonably believes that the Services or Deliverables cannot be replaced or corrected, the Supplier may credit the portion of the Price applicable to those Services and Deliverables.
- 12.3 The total liability of the Supplier for any loss arising from any defect or non-compliance of the Services and Deliverables or any other breach by the Supplier of its obligations under the Agreement will not in any circumstances exceed the Price received by the Supplier.
- 12.4 The Supplier will not be liable for:
- 12.4.1 any consequential indirect or special damage or loss of any kind; or
- 12.4.2 any loss caused by the Client's servants, agents or any other persons whatsoever; or
- 12.4.3 the Client's use of the Deliverables other than in accordance with any specified assumptions, constraints and documentation supplied by the Supplier; or
- 12.4.4 any alteration made to the Deliverables by anyone other than the Supplier (or its authorised agents or subcontractors).
- 12.5 The Client will indemnify the Supplier against any claim by the Client's servants, agents or other persons in respect of any loss arising from any defect in or non-compliance of the Services and Deliverables or in respect to any other matter whatsoever.
- 12.6 No warranty, condition or guarantee either express or implied is given by the Supplier as to the quality, state or condition of any Services or Deliverables or as to their appearance, content or fitness for any particular purpose.
- 12.7 The Client acknowledges that, subject only to any representations or warranties expressly recorded in the Agreement, the Client entered into the Agreement in reliance solely on its own enquiries, skill and judgement and not upon any representations, or warranties of the Supplier.
- 12.8 Any samples, illustrations, descriptive material or specifications made available by the Supplier including without limitation designs and estimates of performance are indicative only unless specifically stated otherwise. All samples and documents containing such illustrative or descriptive material shall remain the exclusive property of the Supplier and must not be copied, loaned or transferred by the Client.
- 13 OWNERSHIP OF DELIVERABLES**
- 13.1 Property in and ownership of the Deliverables remains in the Supplier until all money the Client owes to the Supplier (whether under this Agreement or otherwise) has been paid in full. Thereafter, property in and ownership of the Deliverables is subject to the terms of the Agreement.
- 13.2 If the Supplier's Deliverables become mixed with or incorporated in any other products, property or materials in such a way that they cease to exist as separate Deliverables, the original ownership of the new products created by that mixing will vest immediately on creation in the Supplier as co-owner of the new products with the owner of any other materials which become part of the new products. The co-ownership will be calculated

- proportionally to the value of the various component materials. The Supplier's ownership of the new products is otherwise on the same terms as the ownership of the Deliverables originally supplied.
- 13.3 If the Client is in default under the Agreement or if one of the events described in clause 19.1.2 occurs, the Client will at the Supplier's request re-deliver the Deliverables to the Supplier or do anything reasonably necessary to allow the Supplier to retake possession of them.
- 13.4 The Client hereby grants a security interest to the Supplier in respect of:
- 13.4.1 the Deliverables; and
- 13.4.2 any new products in terms of clause 13.2; and
- 13.4.3 any other products or personal property owned by the Client that have been installed or worked on by the Supplier or which are required for the completion of the work (the Secured Products).
- 13.5 If the Client is in default under the Agreement or if one of the events described in clause 19.1.2 occurs, then the Supplier will be entitled without notice to repossess the Secured Products. The Client authorises the Supplier or its representatives, servants, agents or employees to enter the property where the Secured Products are situated for the purpose of repossession. The Supplier will not be liable for any costs, expenses, damage, loss of any kind suffered by the Client as a result of repossession.
- 13.6 If the Supplier takes possession of the Secured Products or the proceeds and after deduction of all money the Client owes to the Supplier (including any interest due and including any expense incurred by the Supplier in enforcing its rights including legal expenses as between solicitor and client) there is a surplus, the Supplier will pay that surplus to the Client.
- 14 PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**
(Capitalised expressions have the meaning prescribed to them in the PPSA)
- 14.1 The Client acknowledges the Supplier's Security Interest in the Secured Products ("Collateral") supplied to the Client but not paid for under these terms and conditions.
- 14.2 The Client reserves the right at its discretion to register a Financing Statement in respect of each category of Deliverables supplied to the Client which comprises collateral. The Supplier's costs of registering a Financing Statement or a Financing Change Statement shall be paid by the Client and where applicable, debited by the Supplier against the Client's account with the Supplier. On the request by the Supplier the Client shall promptly execute any documents and do anything else required by the Supplier to ensure that the Supplier's Security Interest in the Collateral created by these terms and conditions constitutes a Perfected Security Interest over the Deliverables comprising collateral.
- 14.3 The Client shall not agree to allow any person to file a Financing Statement over the Collateral without the prior consent of the Supplier and shall notify the Supplier immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral.
- 14.4 The Client and Guarantor (if any):
- 14.4.1 Agree(s) that nothing in s114(1)(a), 133, and 134 of the PPSA will apply to the Agreement; and
- 14.4.2 Waive(s) the Client's right to do any of the following:
- (a) Object to the Supplier's proposal to retain any Personal Property under s121 of the PPSA;
- (b) Not have products damaged when the Supplier removes an Accession under s125 of the PPSA;
- (c) Receive notice of the removal of an Accession under s129 of the PPSA;
- (d) Apply to the Court for an order concerning the removal of an Accession under s131 of the PPSA;
- (e) To receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by these Terms and Conditions.
- 15 CONSUMER GUARANTEES ACT**
- 15.1 Where the Supplier is supplying Services and

- Deliverables to the Client for business purposes within the meaning of the Consumer Guarantees Act 1993, the Client acknowledges that, pursuant to Section 43, the provisions of that Act will not apply to the Agreement.
- 15.2 Where the Supplier is supplying Services and Deliverables to the Client other than for business purposes the provisions of clauses 12.3 to 12.7 above will have no effect and the provisions of the Consumer Guarantees Act 1993 will apply.

16 INFORMATION AND PRIVACY ACT

- 16.1 For the purpose of facilitating the efficient running of the Supplier's business, the Client and Guarantor (if any) authorise the Supplier:
- 16.1.1 to collect all information it may require from any third parties and authorises those third parties to release that information to the Supplier; and
- 16.1.2 to hold all information given by the Client, Guarantor or any third parties to the Supplier; and
- 16.1.3 to use that information, including giving information to any other person to facilitate collection of debts from the Client or the Guarantor.
- 16.2 The information will be collected, held and used on the condition that:
- 16.2.1 it will be held securely at the Supplier's registered office; and
- 16.2.2 it will be accessible to any of the Supplier's employees and agents who need access to it for the efficient running of the Supplier's business; and
- 16.2.3 the Client or Guarantor may request access to and correction of it at any time.

17 DELIVERY & RISK

- 17.1 Notwithstanding that the Supplier may retain Intellectual Property and property in the Deliverables, all risk in the Deliverables passes to the Client on Delivery.

18 INTELLECTUAL PROPERTY

- 18.1 All Existing IP owned by either party will remain the sole and exclusive property of that party, and nothing in the Agreement confers on either party any right or interest in, or licence to use, or permit to be used, any of the other party's Existing IP, except that:
- 18.1.1 to the extent that any Existing IP of the Supplier is contained in the Deliverables, the Supplier grants the Client an irrevocable (subject to clause 18.10), royalty free, non-exclusive licence to access and use any such Existing IP as may be reasonably required by the Client to enable it to obtain the full use and benefit of the Deliverable
- 18.1.2 The Supplier will have a non-exclusive licence to access, use, reproduce, store and/or adapt the Client's Existing IP to the extent required to perform the Services and otherwise give effect to the Agreement.
- 18.2 The Client warrants that all designs or instructions given to the Supplier, including any software supplied by the Client, will not cause the Supplier to infringe any patent, registered design, trademark or copyright in the execution of the Agreement and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 18.3 The Client warrants that it has and will continue to have the right and authority of all third party owners, head licensors, and any sub-licensors to use any information, material, systems, software, or processes that the Client does not own but uses and which the Supplier needs access to in order to provide the Services.
- 18.4 All Intellectual Property in any Third Party Software that is supplied to the Client (or incorporated in any of the Deliverables supplied to the Client) under the Agreement remains the sole and exclusive property of the supplier of the Third Party Software, irrespective of whether the relevant Third Party Software is supplied to the Client by the Supplier or by the relevant Third Party Software supplier directly.
- 18.5 The Client agrees that it is aware of and will strictly comply with the terms of any Third Party Software license agreements or arrangements for Third Party Software which has been supplied by the Supplier as a Deliverable (or incorporated into any Deliverable) under the Agreement.

- 18.6 Notwithstanding any other provision of the Agreement, unless it is expressly stated otherwise in the Services Agreement, or other written agreement between the parties, notwithstanding any Intellectual Property rights of the Client in a Deliverable that might be specified in the Agreement, all Supplier Process IP will be and remain the sole and exclusive property of the Supplier and, except as provided in clause 18.7, the Client will obtain no rights or interests in the Supplier Process IP.
- 18.7 The Supplier grants to the Client an irrevocable (subject to clause 18.10), royalty free, non-exclusive licence to access, possess, store and use such Supplier Process IP as may be reasonably required by the Client to enable it to obtain the full use, benefit and enjoyment of each Deliverable provided pursuant to the Agreement, subject to any limitations or restrictions on such rights imposed by any supplier of Third Party Software to the extent that Supplier Process IP incorporates Third Party Software.
- 18.8 Nothing in the Agreement affects the Supplier's right to continue to develop solutions that are similar to and which use or are based upon any Deliverable, its development methods, techniques, technical components or software routines built and used before entry into the Agreement or during its term.
- 18.9 The Client agrees that the Supplier may publicly identify the Client as a client of the Supplier, and the Client grants the Supplier a perpetual, royalty-free licence to use the Client's name and Intellectual Property for the purposes of publicly identifying the Client as a client of the Supplier (and providing details of the Services and Deliverables) in any of the Supplier's marketing materials, including (without limitation) on the Supplier's website.
- 18.10 Any licence granted by the Supplier to the Client pursuant to the Agreement may be terminated by the Supplier on the occurrence of any of the events specified in clause 19.
- 18.11 Unless otherwise agreed in writing by the parties, any improvements, developments or modifications to the Supplier's Existing IP created by, or on behalf of, either party during the term of the Agreement and all Intellectual Property therein, will vest absolutely and automatically upon creation in the Supplier.

19 TERMINATION

- 19.1 Without prejudice to the Supplier's other remedies, this Agreement (including any unperformed obligations of the Supplier) may be terminated by the Supplier's written notice to the Client that no further Services and Deliverables will be supplied if:
- 19.1.1 the Client is in default under the Agreement (including the terms of any licence granted pursuant to the Agreement); or
- 19.1.2 the Client becomes insolvent; or is subject to the appointment of a receiver, manager, liquidator, or statutory manager; or commits an act of bankruptcy; or makes a scheme of arrangement with its creditors; or is unlikely to be able to meet its obligations to the Supplier (in the opinion of the Supplier).
- 19.2 The agreements of the parties will not merge with termination under this clause.

20 CONFIDENTIALITY AND NON-SOLICITATION

- 20.1 Each party agrees to treat all information and ideas communicated to it by the other confidentiality and agrees not to divulge it to any third party without the other party's prior written consent. The parties will not copy such information supplied (except to the extent necessary to carry out its obligations under the Agreement) and will either return or destroy the information together with all copies at the request of the other party.
- 20.2 The Client will not, during the provision of the Work or for a period of six months after Delivery, without the Supplier's prior written consent, directly solicit or offer employment to employees or, or individuals contracting to, the Supplier.

21 PRIORITY

- 21.1 If there is any conflict or inconsistency between these Terms and Conditions and the provisions of any Services Agreement, these Terms and Conditions will prevail (to the extent of any

inconsistency).

22 GENERAL

- 22.1 Amendment: The Supplier reserves the right to review and amend these Terms and Conditions at any time. Any change will take effect from the date on which the Supplier notifies the Client of the change.
- 22.2 Severability: If any provision of the Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the Agreement will remain in full force apart from such provision which will be deemed deleted.
- 22.3 Governing Law: The Agreement will be governed by, and construed in accordance with, the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand
- 22.4 Waiver and Forbearance: All the Supplier's rights will remain in full force despite any delay in enforcement. The Supplier will not be deemed to have waived any condition unless that waiver is in writing and signed by a duly authorised officer of the Supplier. Any waiver will apply only to the particular matter in respect of which it is given.
- 22.5 The provisions of the Contractual Remedies Act 1979 shall apply to the Agreement as if section 15(d) were omitted from that Act.
- 22.6 Force Majeure: Neither party will be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of the relevant party, provided that this clause will not excuse a party from any obligation to make payment when due under the Agreement.
- 22.7 Assignment: The Supplier is entitled at any time to assign its rights under the Agreement. The assignee will be entitled to claim full rights of set off or counter claim against the Client, its charge holders or successors in respect of the Agreement or part of the Agreement which is assigned. The Client is not entitled to assign its rights under this Agreement.
- 22.8 Entire Contract: The Supplier and the Client agree that the Agreement expresses the complete agreement between them. There has been no representation made by either party to the other except as expressly set out in this document.

PART II – BRAND DESIGN SERVICES

23 DELIVERY

- 23.1 Delivery shall take place when the visual designs representing the Client's brand are signed off by the Client.

24 INTELLECTUAL PROPERTY

- 24.1 Subject to clause 18, all Intellectual Property in the Deliverables resulting from the provision of the Services will vest in the Client on payment by the Client of all amounts owing to the Supplier pursuant to the Agreement, provided that:
- 24.1.1 For the avoidance of doubt, the Client does not acquire any Intellectual Property in any designs or concepts proposed by the Supplier in the course of providing the Services which were rejected by the Client.
- 24.1.2 Where the Supplier has provided photographic or graphical (digital or otherwise) images for the Client, any such images may be subject to on-going licence payments for the use of such images.

PART III – WEBSITE HOSTING SERVICES

25 TERM

- 25.1 The Supplier will (unless the Agreement is terminated in accordance with its terms) provide the Website hosting services specified in the Services Agreement to the Client for a term of one year from the Commencement Date (the Term).
- 25.2 On each anniversary of the Commencement Date, the Term will automatically renew for a further 12 month term, unless terminated in writing by either party no less than 3 months prior to the expiry of the then current term (or otherwise terminated by either party in accordance with the terms of the Agreement).

26 PRICE

- 26.1 The Price for the Services may be reviewed by

the Supplier on an annual basis and the revised Price will apply to the Services from the relevant anniversary of the Commencement Date, provided that the Client has received written notice of the revised Price (such notice to be at least 3 months where the rate of the increase exceeds [5]% of the then current Price payable by the Client).

27 SUPPLIER OBLIGATIONS

- 27.1 The Supplier will ensure that from the Commencement Date:
- 27.1.1 Sufficient capacity is maintained on the Supplier's webserver to enable users to access the Client's Website in a timely manner;
- 27.1.2 The Client's Website is accessible to users in accordance with the Service Levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime, or website maintenance in accordance with the Services Agreement or in accordance with clause 26.2).
- 27.2 Except where the Client has engaged the Supplier to provide maintenance services, the Supplier will provide the Client with reasonable access to the Client's website to perform maintenance services.
- 27.3 The Supplier will not, except to the extent expressly authorised by the Agreement, without the Client's written consent:
- 27.3.1 Alter or amend, or permit any person to alter or amend the Client's Website;
- 27.3.2 Post or display on the Client's Website any advertisement, sponsorship or promotion;
- 27.3.3 Use any user data for marketing, referral or other purposes;
- 27.3.4 Sub-licence, rent, time-share, lease or grant any rights to use the Client's Website; or
- 27.3.5 Assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this agreement.

28 CLIENT OBLIGATIONS

- 28.1 The Client will, at its sole cost and expense:
- 28.1.1 Except to the extent that it has contracted the Supplier to provide those services, develop and maintain the Client's Website;
- 28.1.2 Provide the Client's Materials to the Supplier, in such form as reasonably prescribed by the Supplier from time to time, and hereby grants the Supplier a non-exclusive, world-wide irrevocable licence to use the Client's Materials for the purposes of hosting the Client's Website;
- 28.1.3 Do all things reasonably necessary to enable the Supplier to host the Client's Website on the Supplier's webserver
- 28.1.4 Ensure that the Client's Materials supplied to the Supplier do not contain:
- (a) Prohibited Content;
- (b) A link to any Website that contains Prohibited Content;
- (c) Any viruses, Trojan horses, worms, time bombs or any other software program or routine designed for or capable of interfering with the operation of the Supplier's webserver or the provision of Website hosting services to the Client or any other client of the Supplier.
- 28.2 The Client must not do (or permit any other person to do) anything that prevents or hinders the Supplier from providing Website hosting services to any other person.

29 CHANGE OF SERVER

- 29.1 The Supplier reserves the right to change the Client's hosting level and move the Client's Website to a different webserver at anytime during the Term, where the Supplier considers such actions to be appropriate with reference to (among other things) the level of usage of the Client's Website and the transactions being carried out via the Client's Website (for example e-commerce transactions that might require a more secure webserver).
- 29.2 The Client acknowledges that a change in the webserver may result in an increase in the Price, and the Client agrees to pay any additional hosting costs associated with any change in the webserver in accordance with clause 28.1, provided that the Supplier notifies the Client in writing of the exercise of its rights and the increased cost prior to effecting the change.

PART IV – WEB DEVELOPMENT SERVICES

30 SUPPLIER OBLIGATIONS

- 30.1 The Supplier will use its best endeavours to develop the Client's Website in accordance with the Specifications and Development Stages specified in the Services Agreement.
- 30.2 The Supplier will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Website which is attributable to:
- 30.2.1 Incorrect information provided by the Client, either pursuant to the Agreement or otherwise;
- 30.2.2 Failure by the Client to provide relevant information; or
- 30.2.3 Any third party materials used by the Supplier in the development of the Website.

31 CLIENT OBLIGATIONS

- 31.1 The Client will:
- 31.1.1 Provide all Client Materials;
- 31.1.2 Provide any other information, ideas or suggestions which are to be expressly considered by the Supplier in developing the Website;
- 31.1.3 Ensure that the Supplier is given such information and assistance as the Supplier reasonably requires to enable it to develop the Client's Website.

32 DELIVERY

- 32.1 Delivery shall take place when the Client's Website is made live to the public.

33 TESTING

- 33.1 The Client will commence the Testing Phase on Delivery. Any alleged defects, shortages in quality or quantity, errors, omissions or failure to comply with the Specifications must be notified to the Supplier in writing within three weeks of Delivery. If no notice is given pursuant to this clause, the Deliverable shall be conclusively presumed to be in accordance with the Agreement and the free from any defect or damage.
- 33.2 Where the Client notifies the Supplier of any defect within the timeframe specified in clause 32.1, the Client will allow the Supplier an opportunity to inspect the Website within a reasonable time following Delivery.

34 INTELLECTUAL PROPERTY

- 34.1 The Supplier retains all Intellectual Property in the Deliverables but grants to the Client an irrevocable (subject to clause 18.10), royalty free, non-exclusive licence to access, store and use the Client's Website or other Deliverable as may be reasonably required by the Client to enable it to obtain the full use, benefit and enjoyment of the Deliverables, subject to any limitations or restrictions on such rights imposed by any supplier of Third Party Software to the extent that the Deliverables incorporate Third Party Software.
- 34.2 Other than as allowed under the Copyright Act 1994 and the conditions therein, the Client agrees that it will not in any way sell, reproduce, adapt, distribute, transmit, publish or create derivative works from any part of any Website developed by the Supplier for the Client without the Supplier's prior written consent (including but not limited to underlying code elements, or any part of the Website design or layout).

PART V – SOFTWARE DEVELOPMENT SERVICES

35 DELIVERY

- 35.1 Where the Supplier is providing installation Services, Delivery of the Developed Software will take place on completion of the installation.
- 35.2 Where the Supplier is not providing installation Services, and for all other Deliverables supplied as part of the Services, at the Supplier's sole discretion Delivery shall take place when:
- 35.2.1 The Client takes possession of the Deliverables at the Supplier's address;
- 35.2.2 The Client takes possession of the Deliverables at the Address; or
- 35.2.3 The Client's nominated carrier takes possession of the Deliverables in which event the carrier shall be deemed to be the Client's agent.

36 INTELLECTUAL PROPERTY

- 36.1 Unless otherwise specified in the Agreement (or

otherwise in writing between the Parties), sole and exclusive ownership in Developed Software and all other Deliverables shall remain with the Supplier.

- 36.2 The Supplier grants to the Client an irrevocable (subject to clause 18.10), royalty free, non-exclusive licence to access, possess, store, use, exploit, reproduce and/or adapt any Developed Software or other Deliverable as may be reasonably required by the Client to enable it to obtain the full use, benefit and enjoyment of the Deliverables, subject to any limitations or restrictions on such rights imposed by any supplier of Third Party Software to the extent that Developed Software incorporates Third Party Software.
- 36.3 The Client agrees that it will not without the Supplier's prior written consent:
- 36.3.1 Copy the Developed Software;
- 36.3.2 Allow any third party to have access to the Developed Software;
- 36.3.3 Alter, modify, tamper with or reverse engineer the Developed Software; or
- 36.3.4 Combine the Developed Software with any other software.
- 36.4 Other than as allowed under the Copyright Act 1994 and the conditions therein, the Client agrees that it will not in any way sell, reproduce, adapt, distribute, transmit, publish or create derivative works from any part of the Developed Software without the Supplier's prior written consent (including but not limited to underlying code elements).

PART VI – SUPPORT SERVICES

37 TERM

- 37.1 The Supplier will (unless the Agreement is terminated in accordance with its terms) provide the Support Services specified in the Services Agreement to the Client for a term of one year from the Commencement Date (the Term).
- 37.2 On each anniversary of the Commencement Date, the Term will automatically renew for a further 12 month term, unless terminated in writing by either party no less than 3 months prior to the expiry of the then current term (or otherwise terminated by either party in accordance with the terms of the Agreement).

38 PRICE

- 38.1 The Price for the Services may be reviewed by the Supplier on an annual basis and the revised Price will apply to the Services from the relevant anniversary of the Commencement Date, provided that the Client has received written notice of the revised Price (such notice to be at least 3 months where the rate of the increase exceeds [5]% of the then current Price payable by the Client).

39 SUPPLIER OBLIGATIONS

- 39.1 The Supplier will keep full and accurate records of all work performed in providing the Services.

40 CLIENT OBLIGATIONS

- 40.1 The Client will
- 40.1.1 Ensure that the Supplier is given such information and assistance as the Supplier reasonably requires to enable it to provide the Services
- 40.1.2 The Client will procure all necessary authorisations, licences and consents to enable the Supplier to have access to the Client's Website and/or Developed Software in order to provide the Services.

41 INTELLECTUAL PROPERTY

- 41.1 Unless otherwise agreed in writing by the parties, any improvements, developments or modifications to the Client's Existing IP created by, or on behalf of, either party during the term of the Agreement and all Intellectual Property therein will vest absolutely and automatically upon creation in the Client.
- 41.2 Any developments, upgrades, or modifications to the Client's Website or the Developed Software carried out by the Supplier in performing the Services will be owned by the Supplier.
- 41.3 The Client grants the Supplier a non-exclusive, non-transferable and royalty free licence to use the Client's Intellectual Property for the term of the Agreement for the purposes of, and to the extent necessary for, the provision of the Services.