

Terms and Conditions For Sixothree Marketing Limited

V2.0 April 2017

KEY FACTS

These Terms and Conditions to cover the relationship between us and you. It is important that you read them in full before contracting with us.

This page does not form part of the Terms and Conditions but below are key elements we have extracted from the Terms and Conditions and drawn your attention to for your ease of reference.

1. Payment

Our terms of payment are 14 days from receipt of our invoice. All prices are quoted in Pounds Sterling and payment cannot be accepted in any other currency. Dependent upon which service or goods you ask us to prepare will depend upon when you receive your invoice; however, we would be grateful if you would ensure that payment is made promptly. If payment is not made promptly, then this can cause delays and interruptions to services which we would hope to avoid. Our Bank details are as follows:-

Bank: Lloyds TSB

Account Number: 38519160

Sort Code: 30-96-18

2. Specification

When you contact us you explain what it is that you would like us to do. We attempt to reduce this down to formal instructions which are provided in the form of a **Quote**. It is vital that you read the Quote and in particular ensure that the description of the goods or service we are going to provide is accurate. We will do exactly what it says in the Quote. Please therefore ensure that there is nothing missing or ambiguous contained within our Quote Specification before signing the Quote. Whilst we look forward to working with you to ensure that you are happy with the specified goods and/ or services provided by us, and will assist you by making amendments to the goods and/ or services following initial drafts, these amendments are limited to 3 sets per Agreement. This limitation enables us to viably continue to work with you.

3. Our Products

Due to difference in equipment, processing, substrates, inks, pigments and other conditions between colour proofing, computer monitors and production pressroom operations, a reasonable variation in colour between proofs and the completed job shall constitute acceptable delivery. Please note that it is almost impossible to replicate the exact colours you see on your monitor with those that you print as they use two entirely different colour models.

4. Contact Details

In the event that you have any queries or issues in relation to your Contract, then please contact Karen Randall of Sixothree Marketing Limited on the following email addresses and telephone number:

Address: Sixothree Marketing Ltd, 13th Floor, City Tower, Piccadilly Plaza, Manchester M1 4BT

Email Address: info@sixothree.co.uk

Telephone Numbers: 0161 694 9619

We will endeavour to come back to you **within 2 business days**.

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.

Service Charges: the charges payable by the Customer for the supply of the Services in accordance with the Order

Commencement Date: has the meaning set out in clause 2.1.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.12

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

Customer: the person, firm or corporate body who purchases Goods and/or Services from the Supplier.

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

Goods: the goods, including the Deliverables, created by the supplier on the instructions of the Customer as set out in the Order

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for Goods or Services as set out in the signed Quote.

Services: the services, including the Deliverables including but not limited to the following categories of services being: marketing consultancy; strategic planning; project management; copywriting and design; event management; website design, development and content management; search engine optimisation, video concept production; social media management; public relations; and direct marketing supplied by the Supplier to the Customer as set out in the signed Quote/ Order

Specification: the description or specification of the Services and/or Goods provided in writing by the Supplier to the Customer in the Quote, and approved by the submission to the Supplier of the Order

Supplier: Sixothree Marketing Limited of 34 North Street, Bridgwater, Somerset, United Kingdom, TA6 3YD incorporated in England and Wales with company registration number 10662874 (also trading as Sixothree)

Supplier Materials: has the meaning set out in clause 5.1.5

Working Hours: between the hours of 9am and 5pm each Business Day.

1.2. Construction

In these Conditions, the following rules apply:

- 1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. reference to a party includes its successors or permitted assignees;
- 1.2.3. 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;
- 1.2.4. 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
- 1.2.5. reference to **writing** or **written** includes faxes and e-mails.
- 1.2.6. All charges and prices for Services carried out by the Supplier are subject to VAT (where applicable) at the prevailing rate.

2. BASIS OF THE CONTRACT

- 2.1. The Quote constitutes an offer by the Supplier to sell Goods and/or Services to the Customer in accordance with these Conditions.
- 2.2. The Quote shall be deemed to be accepted when the Customer issues written acceptance of the Quote by way of an Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4. 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.
- 2.5. 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.
- 2.6. Any quotation given by the Supplier is only valid for a period of 30 Business Days from its date of issue and then only in respect of the Specification to which it specifically relates.
- 2.7. If the Customer wishes to purchase additional Goods and/or Services from the Supplier, not included within the previously agreed Specification, these will be dealt with by separate Quotation and an additional Order must be submitted by the Customer in accordance with clause 2.2.

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. The Supplier reserves the right to amend the specification of the Services if required by applicable statutory or regulatory requirements.

4. SUPPLY OF GOODS

- 4.1. The Goods are described in the Quote/Order.
- 4.2. 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 Goods as detailed in the Specification. This clause 4.2 shall survive termination of the Contract.
- 4.3. The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 4.4. Title to the Goods remains vested in the Supplier until payment in full of the Charges and Payments due under the Contract, and to extent necessary the Supplier reserves the right to exercise a lien over such Goods.

5. CUSTOMER'S OBLIGATIONS

- 5.1. The Customer shall:
 - 5.1.1. ensure that the terms of the Quote and any information it provides for inclusion in the Order Specification, and as approved by way of the Artwork Approval Form, are complete and accurate;
 - 5.1.2. co-operate with the Supplier in all matters relating to the Goods and Services;
 - 5.1.3. 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;
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- 5.1.4. 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;
- 5.1.5. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- 5.1.6. ensure that any information, and / or ideas contained therein, provided by the Supplier during the course of negotiating business with the Customer, whether by way of written or oral presentation, be treated as confidential information and accordingly may not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation;
- 5.1.7. 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; and
- 5.1.8. notify the Supplier in writing of any issues regarding loss, quality and/ or damage within 2 Business Days of delivery of Goods/Works, and thereafter within 5 Business Days of delivery of Goods/Works notify the Supplier in writing of any claim.
- 5.1.9. If any items are delivered damaged, the provisions of clause 5.1.8 will only apply where notification of damage has been provided to courier immediately upon signing for the items, and this notification is subsequently provided with the notification at clause 5.1.8 above.
- 5.2. 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**):
 - 5.2.1. the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services or cease work on the Goods 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;
 - 5.2.2. 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 5.2; and
 - 5.2.3. 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.

6. CHARGES AND PAYMENT

6.1. Service Charges

- 6.1.1. The Supplier shall invoice the Customer in accordance with the Terms agreed in the Order.
- 6.1.2. The Customer shall pay each invoice supplied by the Supplier within 14 days of the date of the invoice in full and in cleared funds to a Bank Account nominated in writing by the Supplier.
- 6.1.3. Time for payment shall be of the essence of the contract.
- 6.2. Goods Charges
 - 6.2.1. Where the Supplier is to pay external invoices as part of the Work to be undertaken, Work will not be undertaken by the Supplier until payment of an invoice has been received by the Supplier.
 - 6.2.2. Where the Works to be undertaken include web design and/ or development, the Customer is required to make payment of 50% of the costs outlined in the Quote/Order prior to the Commencement of Works.
 - 6.2.3. Where the Works to be undertaken include printing and/ or purchased data, the Customer is required to make payment of 100% of the costs outlined in the Quote/Order prior to the delivery.
 - 6.2.4. Nothing in this section shall prevent the Supplier from requiring payment in all or part prior to the Commencement and/ or delivery of Works, save that any requirement to pay invoices, in all or part, prior to Commencement and/ or delivery of the Work, will be by prior agreement between the parties and in any event by reference to that stated on the Quote/Order.
- 6.3. Where the Customer opts to cancel the contract, the Customer is required to make payment of a sum equivalent to the costs incurred, on a full indemnity basis, by the Supplier up until the Business Date immediately after receipt of written notice of cancellation.

7. LATE PAYMENT CHARGES

- 7.1. In the event that payment is not received by the Supplier within 14 days of delivery of an invoice, interest and late payment charges shall be incurred as follows:
 - 7.1.1. Interest shall be incurred daily on the total outstanding sum at the rate of 8% above the Bank of England base rate per annum;
 - 7.1.2. An administration charge of £15 shall be incurred by the Customer for every letter/e-mail sent by the Supplier to the Customer chasing unpaid invoices;
 - 7.1.3. The Supplier reserves the right to charge compensation in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended; and
 - 7.1.4. The Customer agrees to indemnify the Supplier for any charges or costs it incurs in instructing professionals, including but not limited to solicitors, barristers and bailiffs, for pursuing any debts owed by the Customer to the Supplier.
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8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. All Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by the Supplier until payment is made of the Supplier's invoice in full, whereupon all IP rights in goods created for the Customer shall irrevocably transfer to the Customer, the Customer will take on sole responsibility for obtaining and/ or maintaining protection by way of registration of these rights, where applicable.
- 8.2. 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.
- 8.3. All Supplier Materials are the exclusive property of the Supplier.
- 8.4. Subject to receipt of written confirmation from the Customer to the contrary, the Supplier reserves the right to use both initial creative concepts and final approved design work for the purposes of the Supplier's marketing activities (both online and offline), and the Customer grants the Supplier an exclusive licence to utilise these concepts, and works.
- 8.5. For the avoidance of any doubt, where the Customer has provided the Supplier with a third party's Intellectual Property without first obtaining the third party's prior written consent to the use of the right by the Customer and/ or the Supplier, the indemnity provided at clause 4.2 shall be relied upon. This clause shall apply equally where the Customer has provided the Supplier with details of an accreditation, and/ or association of which they are purportedly members or affiliated with, then in so doing the Customer confirms that they have obtained the requisite permission for use of any identifiable third party's Intellectual Property, and have provided the Supplier with any guidelines by which they are bound when utilising such Intellectual Property, and any failure to do so will be governed by the provisions of the indemnity provided at clause 4.2.

9. LIMITATION OF LIABILITY

- 9.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
 - 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 9.1.2. fraud or fraudulent misrepresentation; or
 - 9.1.3. 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:
 - 9.2.1. the Supplier shall under no circumstances whatsoever 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
 - 9.2.1.1. 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 £100.
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- 9.3. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.4. Following production of and/ or delivery of the Goods and/ or Services to the Customer in accordance with the Specification, the Supplier relinquishes any responsibility and/or liability whatsoever either financially or otherwise for any errors, or other issues including but not limited to those relating to print, programming or any end product, save where the Supplier has been notified in accordance with clause 5.1.8.
- 9.5. Where the Customer sources all or part of the Services, including but not limited to printing, from a third party and directly engages with them for the provision of these services, the Supplier's liability will be limited to the artwork provided, and the Supplier shall not be responsible for ensuring the quality and finish produced by a third party engaged directly by the Customer, and over which the Supplier has no control and to which the provisions of clause 5.1.8 do not apply.
- 9.6. This clause 9 shall survive termination of the Contract.

10. TERMINATION OF SERVICES

- 10.1. Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 3 months' written notice if on a retainer.
 - 10.2. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 10.2.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - 10.2.2. 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 or limited liability partnership) 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;
 - 10.2.3. 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;
 - 10.2.4. 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;
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- 10.2.5. the other party (being an individual) is the subject of a bankruptcy petition or order;
 - 10.2.6. 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;
 - 10.2.7. 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);
 - 10.2.8. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 10.2.9. 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;
 - 10.2.10. 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 10.2.2 to clause 10.2.9 (inclusive);
 - 10.2.11. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - 10.2.12. the other party'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; or
 - 10.2.13. 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.
- 10.3. 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 and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.
- 10.4. Without limiting its other rights or remedies, the Supplier may 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 10.2.2 to clause 10.2.13, 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.

11. CONSEQUENCES OF TERMINATION

- 11.1. On termination of the Contract for any reason:
- 11.1.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- 11.1.2. 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;
- 11.1.3. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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
- 11.1.4. clauses which expressly or by implication survive termination shall continue in full force and effect.

12. FORCE MAJEURE

- 12.1. 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.
- 12.2. 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.
- 12.3. If the Force Majeure Event prevents the Supplier from providing any of the Goods and/or Services for more than 2 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.

13. DATA PROTECTION

- 13.1. The Supplier shall comply with any notification requirements under Data Protection Legislation and both parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Agreement.
- 13.2. Notwithstanding the general obligation in clause 13.1, where the Supplier is processing personal data as a data processor for the Customer, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998 ("DPA"); and
 - 13.2.1. provide the Customer with such information as the Customer may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;

- 13.2.2. promptly notify the Customer of any breach of the security measures required to be put in place pursuant to clause 13.2;
 - 13.2.3. ensure it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA; and
 - 13.2.4. not access, process or arrange access or the processing of personal data by any sub-contractor or third party or otherwise transfer or store personal data outside the European Economic Area or any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC without the prior written consent of the Customer and then only in accordance with any corresponding requirements of the Customer or Data Protection Legislation.
- 13.3. In this clause 13, 'data processor', 'personal data', and 'process' or 'processing' shall have the meanings given to them in the DPA.

14. GENERAL

Assignment and other dealings

- 14.1. The Supplier may at any time assign, transfer, mortgage, 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.
- 14.2. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

Notices

- 14.3. 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 or other next working day delivery service, commercial courier, fax or e-mail.
 - 14.3.1. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.3; if sent by pre-paid first class post or other next working day delivery service, 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.
 - 14.3.2. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

Severance

- 14.4. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision
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or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 14.5. If [one party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

Waiver

- 14.6. A waiver of any right under the Contract or law 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 provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

No partnership or agency

- 14.7. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

Third parties

- 14.8. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.9. For the avoidance of any doubt, where the Customer as part of their overall marketing strategy enters into a contract, to which the Supplier is not a party, directly with a third party neither the Customer nor the third party will be entitled to use the Contract to enforce any rights of action against the Supplier for services not carried out and / or managed directly or indirectly by the third party.

Acceptance of Terms

- 14.10. By accepting these terms and conditions the Supplier accepts that these terms and conditions shall supersede any terms and conditions of business provided by the Customer to the Supplier, howsoever and whenever provided by the Customer.

Mediation

- 14.11. If any dispute arises in connection with this Agreement, save for any dispute in respect of non-payment of Charges by the Customer ("the Dispute"), the parties will attempt to settle the Dispute by mediation ("the Mediation"). Unless otherwise agreed between the parties the Mediator shall be chosen by the president of the Centre for Effective Dispute Resolution (CEDR). To initiate the Mediation a party shall give notice in writing ("the Mediation Notice") to the other party requesting a mediation. The Mediation shall take place not later than 28 days after the date of the Mediation Notice. The parties shall send negotiators to the Mediation who have authority to settle the Dispute. In the

absence of agreement to the contrary (but without fettering the discretion of any court or tribunal that becomes seized of the Dispute) the costs and expenses of the Mediation shall be shared equally between the parties. Nothing in this Agreement shall prevent any of the parties from applying to any court or tribunal of competent jurisdiction to seek interlocutory relief.

Variation

14.12. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

Governing law

14.13. 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 the law of England and Wales.

Jurisdiction

14.14. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).