



GENERAL TERMS AND CONDITIONS FOR PRODUCTS AND SERVICES

1. INTRODUCTION

1.1 This page sets out the general terms and conditions ("**General Terms**") which apply to all Products and Services (together "**Deliverables**") which we, Curveball Solutions UK Limited, a company incorporated in the UK under registered company number 9310243, whose registered office is at Suite 5, Enterprise House, Moorgate Point, Moorgate Rd, Liverpool, L33 7XW ("**we**" or "**us**") provide to you as our client ("**you**"), which Deliverables may be more specifically set out within the relevant Order Terms.

1.2 These General Terms explain our duties to you and your duties to us and form part of your agreement with us for all Deliverables we provide you with.

1.3 Our agreement with you is made up of (i) these General Terms ("**General Terms**"); (ii) any specific terms and conditions for specific Deliverables ("**Specific Terms**") (as set out in the Appendix); (iii) any project proposal or order form (the nature of which, for specific Deliverables, is more particularly set out within the Specific Terms) issued by us to you in connection with the provision of the specific Deliverables ("**Order Terms**"); and (iv) any other written document either issued by us (and expressly referring to and incorporating itself into the Agreement) or any amendments or supplements to the agreement signed and agreed in writing between the parties. Together the above documents shall constitute and be known as the "**Agreement**", and apply to the contract between you and us to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.4 When construing the meaning of the Agreement, the order of priority in the event of any inconsistency or conflict shall be as follows:-

1. Any written document either issued by us (and expressly referring to and incorporating itself into the Agreement) or any amendments or supplements to the agreement signed and agreed in writing between the parties.
2. Order Terms.
3. Specific Terms.
4. General Terms.

1.5 In these General Terms, we refer to the Specific Terms and Order Terms together as the "**Additional Terms**".

1.6 All of our terms are set out in material we publish on our website. You should print or save a copy of these General

Terms and the relevant Specific Terms, or can ask us to confirm which Additional Terms apply to the Agreement between you and us at any time.

1.7 Any quotation given by us shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

1.8 Any order placed by you shall only be deemed to be accepted upon your signature of the relevant Order Terms, or, in the event that no Order Terms have been signed, when the Deliverables have been provided to you, at which point and on which date the Agreement shall come into existence ("**Commencement Date**") (unless otherwise set out in the Specific Terms).

1.9 We may amend these General Terms from time to time as set out in Clause 10. Every time you, as our client, agree new Order Terms for the provision of specific Deliverables you should check these General Terms and the Specific Terms to ensure that you understand the terms which will apply to our Agreement at that time. These General Terms were most recently updated in July 2019.

2. DEFINITIONS & INTERPRETATION

2.1 The following terms shall have the following meanings in these General Terms and the Specific Terms (unless otherwise defined therein):

"**Appendix**" means the appendix to these General Terms;

"**Business Day**" means any day which is not a Saturday, Sunday, bank or public holiday in England;

"**Charges**" means the total charges set out or provided for within the Order Terms or otherwise provided for or payable under the Agreement, to be paid in accordance with the timeframes specified in these General Terms or otherwise set out in the Additional Terms, in return for supply of the Deliverables;

"**Clause**" means a clause of these General Terms;

"**Confidential Information**" means in relation to either party, any or all information of a confidential nature (whether in oral, written or electronic form) including trade secrets and information of commercial value known and belonging to that party and concerning its business, suppliers, customers, products or services (including the Deliverables) and any other information which the recipient knows or is notified or has reason to believe is confidential to the disclosing party;

"**IP Rights**" means any patents, trademarks, logos, service marks, design rights (whether register-able or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether register-able or not, in any country (including the United Kingdom);

"**Premises**" means your premises/property to which, or in which, among other things, the Deliverables may be supplied or installed;

"**Products**" means any products which we may provide to you, as may be more specifically set out within the relevant Order Terms; and

"**Services**" means any services which we may provide to you, as may be more specifically set out within the relevant Order Terms.

2.2 Headings are for convenience only and shall be ignored in interpreting the Agreement.

2.3 Words in the singular include the plural and those in the plural include the singular.

2.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal

representatives, successors or permitted assigns.

- 2.5** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.6** 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.
- 2.7** Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.8** A reference to writing or written includes fax.

3. WARRANTIES

- 3.1** In consideration for payment by you of the Charges, we shall provide the Deliverables set out within the relevant Order Terms, or as otherwise agreed between the parties.
- 3.2** We undertake that the Services will be supplied using reasonable skill and care, and performed in a good and workmanlike manner, using appropriate skills and experience, and having regard to the nature of the Deliverables.
- 3.3** We undertake that the Products shall be fit for any purpose expressly agreed to by you and us.
- 3.4** We warrant that any Products shall be free, and shall remain free until title to the Products is (in accordance with Clause 5) shall pass to you, from any third party rights or encumbrances not disclosed to you prior to the Commencement Date, and that you may enjoy quiet possession of such Products except insofar as you may be disturbed by any person entitled to the benefit of any charge or encumbrance so disclosed or known.
- 3.5** We shall use commercially reasonable endeavours to ensure that the benefit of any third party warranties applicable to any Deliverables we supply is passed on to you. In addition, those warranties set out within the relevant Specific Terms in respect of specific Deliverables (if any) shall apply.
- 3.6** We shall use reasonable endeavours to provide the Deliverables (including delivering the Products or performing the Services) within a reasonable time. However, for the avoidance of doubt, the timing of performance of any of our obligations arising under the Agreement shall not be of the essence.
- 3.7** You acknowledge that you have assessed for yourself the suitability of the Deliverables for your requirements. Clause 3.3 notwithstanding, we do not warrant that the Deliverables will be suitable for such requirements, or that any use of the Deliverables will (subject to Clause 3.4) be uninterrupted or error free.
- 3.8** Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform its duties and obligations under the Agreement and that those persons signing the Order Terms, if any, are duly authorised to bind the party for whom they sign.
- 3.9** We may, without further notice to you, appoint a suitably qualified sub-contractor to provide the Deliverables or any part of them on our behalf. You will continue to be liable to pay our Charges as provided in Clause 8 below, and shall not be liable directly for any of the fees of any such sub-contractor, unless otherwise agreed.

4. DELIVERY OF PRODUCTS

- 4.1** We shall deliver the Products to the location set out in the

Order Terms or such other location as the parties may agree (**Delivery Location**) at any time after we notify you that the Products are ready.

- 4.2** Delivery of the Products shall be completed on the Products arrival at the Delivery Location. We shall not be liable for any delay in delivery of the Products that is caused by your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Products, or your failure to take delivery of the Products.
- 4.3** If, in the absence of any mitigating circumstances, you have not received any Products within 14 calendar days of the date of your order for those Products, then you shall be required to give us written notice of non delivery no later than 21 calendar days of the date of your order for those Products. In the event that you have not provided such notice on time, and we are able to evidence proof of posting and a signature upon receipt of the Products, the Products shall be deemed delivered.
- 4.4** If the notice of non delivery is given on time we may have a further period of 14 calendar days within which to deliver the Products.
- 4.5** In the event that you accept delivery of any Products, you shall be required to give us notice of any fault, mis-description or damage to us within 5 Business Days of receipt of the Products, and provide such reasonable photographic or other evidence that we deem necessary in respect of such fault, mis-description or damage.
- 4.6** We may deliver the Products by instalments, which may be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

5. TITLE AND RISK

- 5.1** The risk in any Products shall pass to you on completion of delivery.
- 5.2** Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Conditions, the property in the Products shall not pass to you until we have received in cash or cleared funds payment in full the Charges and the price of all other Products and/or services agreed to be supplied by us to you for which payment is due.
- 5.3** Until title to the Products has passed to you, you shall: (i) hold the Products on a fiduciary basis as our bailee; (ii) store the Products separately from all other goods held by you so that they remain readily identifiable as our property; (iii) not remove, deface or obscure any identifying mark on or relating to the Products; (iv) maintain the Products in satisfactory condition and, to the extent that the Products are not covered under our Payment Protection Plan, keep them insured against all risks for their full price on our behalf from the date of delivery; (v) notify us immediately if you become subject to any of the events listed in Clause 12.3(b); (vi) not purport to sell or otherwise part with possession of the Products, and (vii) give us such information relating to the Products as we may require from time to time, but you may use the Products in the ordinary course of your business.
- 5.4** If, before title to the Products passes to you, you become subject to any of the events listed in Clause 12.3(b) or we reasonably believe that any such event is about to happen and notify you accordingly, then, provided the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or

remedy we may have, we may at any time require you to deliver up the Products and, if you fail to do so promptly, enter your Premises or the premises of any third party where the Products are stored in order to recover them. We may also suspend the provision of the Deliverables.

6. YOUR OBLIGATIONS

6.1 We may need access to your Premises, office accommodation or other facilities, information, tools and resources for, and during the course of, the provision of the Deliverables. If so requested you will provide free and unfettered access to these to the extent reasonably requested by us for the purposes of performing our obligations under the Agreement, and, more generally, shall co-operate with us in all matters relating to the Deliverables. You hereby warrant that you are entitled to grant such access, and provide any such information, tools or resources as outlined in this Clause 6.1.

6.2 You acknowledge that, in giving any opinion or advice in connection with the provision of the Deliverables, we rely on the information about you and the Deliverables, and do not seek to establish the reliability of such information. Accordingly, you: (i) undertake to provide complete and accurate information about yourself and about anything which is or may be relevant to the Deliverables and to provide such other information as we may reasonably request; and, (ii) warrant that any such information provided is accurate and complete in all material respects, and not misleading.

6.3 You also agree to, to the extent necessary, prepare your Premises for the provision of the Deliverables, and to obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

6.4 You shall also keep and maintain all materials, equipment, documents and other property belonging to us (Our Materials) at your Premises in safe custody at your own risk, maintain Our Materials in good condition until returned to us, and not dispose of or use Our Materials other than in accordance with our instructions or authorisation.

6.5 To the extent applicable, you acknowledge that you will retain responsibility at all times for compliance with all relevant laws, protocols and regulations with respect to Products delivered to you, as well as responsibility for all costs of such compliance.

6.6 If our performance of any of our obligations in respect of the Deliverables are prevented or delayed by any of your agents', sub-contractors', consultants', or employees' acts or omissions or by your failure to perform any relevant obligation (**Your Default**), or otherwise in the event of Your Default (i) we shall, without limiting our other rights or remedies, have the right to suspend provision of the Deliverables until you remedy Your Default, and to rely on Your Default to relieve us from the performance of any of our obligations to the extent Your Default prevents or delays our performance of any of our obligations; (ii) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure to perform, or delay in performing, any of our obligations where such failure or delay is attributable to Your Default; and (iii) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from Your Default.

7. DATA PROTECTION

7.1 You acknowledge and agree that details of your name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by us and on our behalf in connection with the Deliverables.

7.2 In this Clause 7, personal data has the meaning given in the Data Protection Act 2018.

7.3 If we process any personal data on your behalf when performing our obligations under the Agreement, the parties agree that you shall be the data controller and we shall be a data processor and in any such case: (i) you acknowledge and agree that the personal data may be transferred or stored outside the EEA or the country where you are located in order to carry out the Services and fulfil our other obligations under the Agreement; (ii) you shall ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully use, process and transfer the personal data in accordance with the Agreement on your behalf; (iii) you shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; (iv) we shall process the personal data only in accordance with the terms of the Agreement and any lawful instructions reasonably given by you from time to time; and (v) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

8. CHARGES

8.1 The Charges (or the method for calculation thereof) (as applicable) set out or provided for within the Order Terms shall only be fixed with regard to the provision of the Deliverables contemplated by the relevant Additional Terms, and such fixing shall be subject to all the other terms of the Agreement, and in particular to any increases to the Charges attributable to events falling outside of our control.

8.2 Where we have been retained on an ad-hoc basis to provide Deliverables, and no monthly retainer or other fixed fee or retainer arrangement exists (as may be set out within the relevant Order Terms), where: (i) we provide you with additional Deliverables beyond those contemplated by the relevant Additional Terms, or (ii) no Order Terms have been provided to you by us, the Charges for all Services shall be at calculated on a time and materials basis at our then prevailing standard hourly rates for such Services, and you shall be liable to pay the Charges for all Products at the costs specified by us.

8.3 We reserve the right to alter our prevailing standard rates for Charges for Services at any time, including during the term of our Agreement with you. However, where such a change to our standard rates is to be applied, we shall normally provide you with at least 1 week's prior notice, either orally or in writing. Changes to our prevailing standard rates will not affect any Charges which we have specifically confirmed as applying during the term of our Agreement within the relevant Order Terms.

8.4 All Charges for Products quoted within the relevant Order Terms shall be inclusive of all costs and charges of packaging, insurance, transport of the Products, which shall be paid by you when pay for the Products.

8.5 We reserve the right to increase the price of the Deliverables, giving you notice, to reflect any increase in

the cost of the Deliverables that is due to: (i) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, other manufacturing costs, or other increases attributable to the actions of third parties); (ii) any request by you to change the delivery date(s), quantities or types of Products ordered, or your specification for the Products (if any); or (iii) any delay caused by your instructions in respect of the Products or your failure to perform your obligations under the Agreement.

8.6 Notwithstanding clause 8.3, our Charges will increase each year in line with the Retail Price Index following provision of 7 days written notice to you.

8.7 We reserve the right to pass on to you any increase in charges from a third party provider.

8.8 We shall invoice you for the Charges specified in the Order Confirmation or otherwise provided for under the Agreement, in respect of Products, on or at any time after completion of delivery, and in respect of Services, on a monthly basis (unless otherwise agreed in the Agreement). You must pay all undisputed Charges set out within each invoice in full and cleared funds within 30 calendar days of the date of the invoice. Timings for payment shall be of the essence of the Agreement. Should cleared funds not be received within 30 calendar days of the date of the invoice then we will automatically be entitled to payment of interest as set out in clause 8.12 below plus compensation in line with the provisions in the Late Payment of Commercial Debts (Interest) Act 1998.

8.9 Payments due under the Agreement shall be made in pounds sterling.

8.10 All sums payable under the Agreement are exclusive of VAT and any other sales or similar taxes, custom duties, withholding taxes or similar charges, for which you shall be responsible.

8.11 You shall have no right to any refund of the Charges paid or payable under the Agreement including on the termination of the Agreement.

8.12 Interest shall be chargeable on any Charges overdue at the rate of 8% per annum to run from the due date for payment until receipt by us of the full amount due before or after judgement and without prejudice to any of our other rights or remedies.

8.13 All Charges due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to you by us against any amount payable by us to you.

8.14 Any payments made by you and returned by the bank will incur a £15 administration charge, which will be payable by you. Where you are situated outside the UK you shall be responsible for transferring the relevant funds internationally to our nominated account and for paying any fees relating to such transfer.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Any IP Rights which the relevant party to the Agreement can demonstrate are already held by it at the date of the Agreement or which at any time after the date of the Agreement have been acquired or developed by it entirely independently of the provision of the Deliverables, and of the use of any Confidential Information of the other party, and all modifications thereto and derivative versions

thereof created at any time ("Background IP") shall remain the sole property of that party.

9.2 You hereby grant to us a royalty-free, non-exclusive, non-transferable licence to use your Background IP, if any, as required to allow us to perform our obligations under the Agreement.

9.3 You acknowledge that, in respect of any third party IP Rights in the Deliverables, your use of any such IP Rights is conditional on our obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.

9.4 Any IP Rights, other than Background IP, created or developed by us in the course of provision of the Deliverables ("Foreground IP") shall be our sole property.

10. AMENDMENTS TO THESE TERMS

10.1 We may, acting in our sole discretion, amend these General Terms and the Specific Terms from time to time.

10.2 Every time we supply Deliverables to you, the terms applying to the Agreement between you and us for the provision of the Deliverables, shall be as outlined in the relevant Order Terms, and as outlined in the version of these General Terms and the Specific Terms in force at the time of the signing (or issuing if no Order Terms have been signed) of the relevant Order Terms.

11. LIMITATION OF LIABILITY – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

11.1 Nothing in the Agreement shall exclude or limit our liability for: (i) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors; (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); (iv) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); (v) for defective products under the Consumer Protection Act 1987 (if applicable); or (vi) for any other liability which cannot be excluded or limited under applicable law.

11.2 Subject to Clauses 11.1 and 11.3, our total liability arising out of or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed a total aggregate amount equal to 100% of the Charges paid to us pursuant to the Agreement, in the period of 12 months considered retrospectively from the date the cause of action arose.

11.3 Subject to Clause 11.1, we shall not in any circumstances be liable to you, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, loss of contracts, loss of business or business opportunities, loss of production, loss of turnover or revenue, loss of availability, any loss or corruption (whether direct or indirect) of data or information provided by you, loss of anticipated savings, wasted expenditure, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by you, or for any consequential, indirect or special loss or damage howsoever arising and of whatsoever nature (even if we had been advised of the possibility of you incurring the same) or any punitive or exemplary damages.

11.4 Nothing in this Clause 11 shall affect or limit your obligation to pay Charges properly due under the Agreement.

11.5 Subject to Clause 11.1, the express terms of the Agreement shall apply in place of all warranties,

conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law. Without prejudice to the generality of the foregoing the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and 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 Agreement.

- 11.6** We shall have no liability to you to the extent that such liability would not have arisen but for Your Default.
- 11.7** Statements made by us relating to the Deliverables, and all recommendations, opinions, surveys and forecasts (together "**Forecasts**") in any communication between you and us, if any, are made in good faith on the basis of information available at the time and such Forecasts are addressed only to you. Whilst we will use reasonable skill and care in the preparation of such Forecasts, neither we nor any sub-contractor engaged by us shall have any liability in relation to losses or damage incurred as a result of or in relation to your reliance on such opinions or recommendations and you expressly acknowledge that such liability is a business risk that you wholly assume.
- 11.8** Implementation of the results of the Services we provide and your completion of any project of which the Services we provide form part may require the involvement or supervision of or giving advice by us to third parties engaged by you. We strongly recommend that you obtain independent advice before entering into any legally binding commitment with any such third parties. Without limiting any other provision of these General Terms, we will, where appropriate, use reasonable endeavours to assist you in minimising the risk and additional cost or delay relating to the involvement in your project of any third parties involved in manufacturing or the provision of other services or goods to you. However, in no circumstance shall we be liable for any of the acts or omissions, or the negligence, of such third parties.
- 11.9** We may, during the supply of the Deliverables, make statements about or recommendations of third party products or services, or supply third party manufactured products to you. We give no warranty in relation to such products or services, and you shall rely solely on the warranties and remedies provided by any such third party with whom you may contract.

12. TERM AND TERMINATION

- 12.1** The Agreement shall come into effect upon the Commencement Date, and, subject to other terms of the Agreement, shall continue in force until we cease providing Deliverables to you and all outstanding Charges owing to us by you have been paid in full (or as otherwise specified within the Specific Terms), or the termination of the Agreement in accordance with its provisions, whichever is sooner.

12.2 **This contract will automatically rollover for the term of two years from the date of expiry, unless 90 days' notice is given in writing to us by you.**

- 12.3** Without prejudice to any other rights to which it may be entitled, either party may give notice in writing to the other terminating the Agreement with immediate effect if: (a) the other party commits any material breach of any of the terms of the Agreement and (if such a breach is

remediable) fails to remedy that breach within 30 days of that party being notified of the breach; (b) a petition is filed, an order is made, or a resolution is passed for the winding up or bankruptcy of the other party or if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or if such an administrator is appointed or if documents are filed with the Court for the appointment of an administrator or if notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder, or if a receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of debt; or (c) a party ceases, or threatens to cease, to trade.

- 12.4** We may terminate the Agreement forthwith by notice in writing if you purport to assign your rights or obligations under the Agreement.

- 12.5** Unless otherwise set out within the Agreement, we may terminate the Agreement for any reason upon giving you 3 months' prior written notice.

13. EFFECTS OF TERMINATION

- 13.1** Termination of the Agreement shall be without prejudice to any rights or liabilities accrued at the date of termination.

- 13.2** Upon termination, you shall, at our request, promptly return to us or otherwise dispose of as we may instruct any Confidential Information which you may have in your possession or under your control and pay to us all outstanding Charges, including interest, due under the terms of the Agreement and return to us any Deliverables which you have not paid for or for which title has not passed.

14. GENERAL

- 14.1** **Confidentiality:** Each party shall maintain the confidentiality of the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as strictly necessary for the performance of its rights and obligations under the Agreement. The provisions of this Clause 14.1 shall not apply to any information which: (a) is or comes into the public domain without breach of the Agreement; or (b) was in the possession of the receiving party prior to receipt from the disclosing party without an obligation of confidence; (c) was obtained from a third party free to divulge such information; or (d) is required by law to be disclosed to any person who is authorised by law to receive the same (after consultation, if practicable, with the disclosing party). Each party shall notify the other party if it becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

- 14.2** **No Assignment or Sub-Licensing:** You may not assign, sub-license, sub-contract, mortgage or otherwise transfer, dispose or otherwise deal with the Agreement or any of

your rights or obligations under it without our prior written consent, such consent not to be unreasonably withheld or delayed. We shall notify you of any assignment or sub-contracting of our rights and obligations hereunder.

- 14.3** Notices: Any notices and other communications required or permitted to be given under the Agreement shall be in writing and shall be delivered or transmitted to the intended recipient's registered office address from time to time or such other address as either party may notify to the other from time to time in accordance with this clause. Any notice shall be treated as having been served on delivery if delivered by hand, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, 4 Business Days after posting if sent by pre-paid first class post, and on completion of transmission if sent by facsimile (subject to receipt of acknowledgement of successful transmission).
- 14.4** Force Majeure: Neither party shall be liable to the other party for any delay or failure to perform its obligations under the Agreement to the extent and for so long as such delay or failure results from circumstances beyond its reasonable control (an "**Event of Force Majeure**") provided that it notifies the other party within 5 Business Days of becoming aware of such event. If any Event of Force Majeure continues for a period exceeding 3 months, either party shall have the right to terminate the Agreement on 30 days' written notice to the other party.
- 14.5** Waiver: The failure of either party to enforce or to exercise any term of the Agreement does not constitute a waiver of such term and shall in no way affect that party's right to later enforce or to exercise it.
- 14.6** Severability: The invalidity or unenforceability of any term of, or any right arising pursuant to, the Agreement shall not affect the validity or enforceability of the remaining terms or rights.
- 14.7** Entire Agreement: The Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between them whether oral or in writing. Any samples, drawings, descriptive matter or advertising issued by us and any illustrations or descriptions of the Deliverables contained on our website or in our advertising material are issued or published for the sole purpose of giving an approximate idea of the Deliverables described in them. They shall not form part of the Agreement or have any contractual force,
- 14.8** Survival: The terms of Clauses 1, 2, 5, 6.4, 6.5, 7, 8.11, 8.12, 8.13, 9, 11, 12, 13 and 14 shall survive expiry, variation or termination of the Agreement. Such other terms in these General Terms or the Specific Terms which, from their nature or context, it is contemplated that they are to survive expiry, variation or termination, shall remain in full force and effect notwithstanding expiry, variation or termination of the Agreement.
- 14.9** No Variation: Without prejudice to our right to amend these General Terms, or the Specific Terms, from time to time, no variation of, or amendment to, these General Terms or the Specific Terms shall bind either party unless made in writing and signed by authorised representatives of both parties.
- 14.10** Independent Contractors: The relationship of the parties is that of independent contractors dealing at arms' length and nothing in the Agreement shall be construed so as to constitute the parties as partners, joint venturers, agents of the other, or co-owners or empower either party to act for, bind or otherwise create or assume any obligation on

behalf of the other and neither party shall hold itself out as entitled to do the same. Nothing in the Agreement shall create or be deemed to create the relationship of employer and employee.

- 14.11** Governing Law: The construction, validity and performance of the Agreement shall be governed by the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.
- 14.12** Third Party Rights: Notwithstanding any other provisions of the Agreement, nothing in the Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.
- 14.13** Remedies: Except as herein expressly provided otherwise, the rights and remedies provided in the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.14** Non-Solicitation: From the Commencement Date, and for a period of 12 months from the termination of the Agreement, neither party shall (except with the prior written consent of the other) solicit the employment of any person who is employed by the other party in the course of providing the Deliverables, other than by means of a general advertising campaign open to all comers and not specifically targeted at any of the employees of the other party.
- 14.15** Publicity: The provisions of Clause 14.1 notwithstanding, we reserve the right to publicise the fact of the Agreement, your identity, and details concerning the nature of the Deliverables provided to you for, inter alia, marketing and promotional purposes.

15. DISPUTE RESOLUTION

- 15.1** Where you dispute any invoice, you shall notify us within 7 calendar days in writing. We agree to provide any evidence as may be reasonably necessary to verify the disputed invoice, and the parties shall negotiate in good faith to attempt to resolve the dispute promptly. We reserve the right not to supply any further Deliverables to you while such a dispute is ongoing. Where only part of an invoice is disputed, you shall pay the undisputed amount on the due date for payment as set out within Clause 8.8 (or otherwise provided for in the relevant Additional Terms). If the parties have not resolved the dispute within 30 days of you providing us with notice that you dispute the relevant invoice, we reserve the right to terminate the Agreement, whereupon all Charges payable under the Agreement shall become immediately due and payable as per Clause 13.2.
- 15.2** Should any dispute arise in which the value of the dispute is in excess of £9,999 then it will be dealt in accordance with clauses 15.3 – 15.7.
- 15.3** The dispute resolution process will be initiated by either party serving notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 15.4** The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:-
- 15.4.1 Within seven days of service of the notice, the parties shall meet to discuss the dispute and attempt to resolve it.
- 15.4.2 If the dispute has not been resolved within seven days of the meeting then the matter shall be referred to the chief executives or persons of equivalent seniority. The chief executives shall meet within seven days to discuss the dispute and attempt to resolve it.

- 15.5** The specific format for the resolution of the dispute under clause 15.4.1 and 15.4.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or position.
- 15.6** Until the parties have completed the steps referred to in clauses 15.2 – 15.5, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.