

**Addmustard Limited, standard terms & conditions of business (the "Terms and Conditions").**

The Terms and Conditions will apply to any Services provided to you ("the Client") by us. We are Addmustard Limited registered in England company number 07965333 and our registered address is 2 Lower Mortlake Road Richmond TW9 2JA on 9 January 2019 ("Agency"). Together defined as "the Parties".

ANY VARIATION TO THESE TERMS AND CONDITIONS MUST BE AGREED BETWEEN US AND YOU IN WRITING AND THE TERMS OF ANY SUCH VARIATION SHALL SUPERSEDE ANY PROVISIONS CONTAINED HEREIN

**1 Background**

- 1.1 The Agency is in the business of the provision of marketing services.
- 1.2 The Client wishes to use certain Services to be provided by the Agency to manage and execute its marketing campaigns and activities. The definition of these Services shall be included in one or more Project Agreements.

**2 Definitions and Interpretation**

- 2.1 The words defined in Schedule 1 shall have the meanings assigned to them in that Schedule.
- 2.2 All other defined words or phrases shall have the meaning given to them when they first appear in that form.
- 2.3 Words in the singular include the plural and vice versa and words in one gender include any other gender.
- 2.4 The table of contents and headings are for convenience only and shall not affect the interpretation of this Agreement.

**3 Agreement to Act as Agency**

- 3.1 The Client appoints the Agency on an exclusive basis to carry out, and the Agency agrees to provide, the Services described more fully in Schedule 2, or any other Project Agreement agreed between the Parties, to the Client in the UK, and worldwide, including the world wide web or any other globally accessible medium (the "Territory") during the Term in accordance with these Terms and Conditions and any relevant Project Agreement (together "the Agreement").

**4 Term**

- 4.1 This Agreement shall commence on the date that any Relevant Project Agreement is accepted by the Client (the "Commencement Date") and shall continue in effect for a minimum period of 12 months.
- 4.2 Either party may terminate this Agreement on not less than 6 months written notice to the other party or such other period as may be set out in the Project Agreement.
- 4.3 Unless terminated earlier as permitted herein, the Agreement will be extended automatically for additional terms of 6 months at the end of the period specified in any Project Agreement agreed between the Parties and each renewal term. Either party may elect not to renew this Agreement by giving not less than 6 months notice in writing to the other party.

**5 Services**

- 5.1 The Agency will perform the Services detailed in any relevant Project Agreement(s) agreed between the Parties, for the Client in a proper, professional manner and to the best of its ability and at all times in good faith.
- 5.2 The Agency will allocate suitable personnel with appropriate levels of experience and seniority to provide the Services.

5.3 The Agency will designate a Campaign Manager who will be its principal representative and point of contact with the Client on matters related to the management and performance of the Agency responsibilities under this Agreement. The Agency reserves the right to appoint an alternative Account Manager following prior consultation with the Client.

5.4 In the event that Client fails to use the Services for any reason offered by Agency and set out in any Project Agreement (or varied by mutual agreement), Client shall be liable to pay for the Services as if they had been provided by Agency in accordance with the terms therein.

## **6 Client Obligations**

6.1 The Client shall perform its obligations under this Agreement with reasonable care and skill and at all times in good faith.

6.2 The Client shall give the Agency all reasonable assistance in completing the Services and if appropriate promptly provide the Agency with any material or information reasonably requested by the Agency.

6.3 The Client shall comply with all the operating, management and control processes agreed between the parties in respect of the Services.

6.4 Following consultation with the Client, the Client agrees to implement (whether directly or through its subcontractors and/or agents) all reasonable recommendations made by the Agency in full and no later than 30 working days following agreement of such recommendations. Such recommendations include but are not limited to reasonable and relevant changes to the Client's website code and the content and data contained within its website.

## **7 Agency's Status**

7.1 The Agency acts in all its contracts as a principal at law.

## **8 Exclusivity**

8.1 During the Term the Client shall not be entitled use any other third party to provide any of the Services defined in any Project Agreement in the Territory without prior agreement of the Agency.

## **9 Approvals and Authority**

9.1 Any reference in this Agreement to the Client's "written approval" or "written instructions" shall mean written approval or written instructions (including by electronic email) by directors or employees of the Client authorised to approve or instruct the provision of Services and/or expenditure ("Authorised Persons").

9.2 The Client will notify the Agency in writing of any change to the Authorised Persons during the Term. The Agency shall not be responsible for any delay in the performance of the Services resulting from the unavailability of an Authorised Person to provide approval required in the course of providing the Services.

9.3 For the purposes of this Agreement written approval shall mean approval signified by:

9.3.1 any fax, letter or form on the Client's notepaper bearing the signature of an Authorised Person; or

9.3.2 email emanating from the Client's e-mail address of an Authorised Person and expressly acknowledged by the Campaign Manager.

## **10 Amendments to Work in Progress**

10.1 The Client may request the Agency to cancel or amend any and all plans or work in progress on not less than 3 months written notice, or such other amount of time as the Parties may agree. The Agency will

take all reasonable steps to comply with any such request provided that the Agency is able to do so within its contractual obligations to any third-party suppliers.

- 10.2 In the event of any such cancellation or amendment the Client will reimburse the Agency for any charges or expenses incurred by the Agency to which the Agency is committed. The Client shall also pay the Agency's remuneration, fees and expenses covering the cancelled or amended Services as well as any charges imposed on the Agency by third parties arising from the cancellation or amendment.

## **11 Remuneration and Payment**

- 11.1 Where its staff or subcontractors are involved in the provision of the Services on a time and materials basis (as set out in any Project Agreement) the Agency shall record and maintain accurate records of the time recorded and shall make available all such records within ten working days to Client upon receipt of written notice.
- 11.2 Client shall pay the fees invoiced by the Agency strictly in accordance with the payment terms specified in any agreed Project Agreement.
- 11.3 The Agency shall invoice the client the fees set out in accordance with any relevant Project Agreement.
- 11.4 Should the Client dispute any fees invoiced by the Agency, the Client shall notify the Agency of any disputed amounts within five days of the receipt of the invoice in writing. The parties shall meet immediately after the date of this notice and discuss in good faith the disputed amount(s) and use best endeavours to agree the amounts properly due. Should the parties fail to reach agreement, the Agency shall refer the matter to an independent arbiter recommend by the English Law Society and not connected with the Agency. The recommendation of the independent arbiter shall be binding on both parties and shall supersede both of each parties rights and remedies, whether set out herein or by law.
- 11.5 Client shall not be entitled to withhold any amounts properly and correctly due to the Agency, except only those amounts disputed in accordance with clause 11.3 above. For the avoidance of doubt, Client shall pay for any fees which have not been disputed included in any invoice.
- 11.6 Should the Client fail to pay any invoice or amount by its due date as indicated on the relevant invoice and which has not been disputed by the Client in accordance with clause 11.4, the Client shall immediately reimburse all and any amounts of the total discounts provided by the Agency, including but not limited to any discounts applied to the Fees, Performances Fees or any other costs and expenses invoiced to the Client and the Fees that would have become due in respect of any free days or free Services provided to the Client by the Agency from time to time. For the the avoidance of doubt, the amounts to be reimbursed to Agency by the Client shall include the amounts of any discounts on all invoices previously presented to the Client or free days or free Services from the Commencement Date.
- 11.7 The Agency reserves the right to immediately suspend all Services provided to the Client and to exercise its statutory right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998, on all invoices presented to the Client which are not paid by the relevant due date. Such interest will accrue on a daily basis from the date on which payment became overdue up to the date on which the Agency receives the full outstanding amount together with all accrued interest.

## **12 Disbursements**

- 12.1 The Agency will invoice the Client in respect of the following costs, including any agreed administration fees, correctly incurred by prior agreement by the Client in writing incurred by the Agency in performing the Services:
- 12.1.1 The cost of any third-party costs including but not limited to media costs, fees, display advertising, link acquisition, insertions, comments, ad serving, usability research, analytics consultancy.
- 12.1.2 Any reasonable travel and subsistence expenses.

- 12.1.3 The costs of any hardware, software, licenses incurred by the Agency in performing the Services.

### **13 Value Added Tax and Duties**

- 13.1 VAT and any relevant duties will be included and itemised separately on Agency invoices, where appropriate, at the rate or amount prevailing from time to time.

### **14 Intellectual Property Rights**

- 14.1 The Rights in all material produced by the Agency ("Agency Material") shall remain with the Agency, unless otherwise agreed. During the Term, the Agency grants the Client a non-exclusive, royalty-free, non-transferable licence to use the Agency Materials solely for the Accounts under this Agreement.
- 14.2 The Agency shall obtain all such usage rights for the Client in respect of any Third-Party Software or third-party material as are deemed necessary by the Client.
- 14.3 The Client shall notify the Agency immediately if the Client becomes aware of any unauthorised use of the whole or any part of the Software by any person.
- 14.4 All rights in any Software or other property owned or licensed by the Client and accessed or used by the Agency shall vest in the Client.

### **15 Confidential Information**

- 15.1 The parties acknowledge a duty during or after the Term to not disclose without the other's prior written permission any Confidential Information, subject to clause 15.4 below.
- 15.2 In particular during and for a period of 24 months after proper termination of this Agreement by either party both Parties undertake to the other to keep confidential any business, marketing, sales information and statistics relating to the Client's business with which the Client may supply the Agency in the course of any work for the Client.
- 15.3 Both Parties shall use reasonable endeavours to ensure these obligations are observed by its own personnel and any third parties to whom Confidential Information has to be disclosed in order to enable the Agency to carry out its obligations under this Agreement.
- 15.4 The restrictions in this Clause shall not prevent:
- 15.4.1 The disclosure by Agency that Client has entered into a contract with Agency for the provision of Services and the communication of the nature and results of those Services, including but not limited to the Client's name and logo; the activities carried out by Agency in respect of the Services provided and any changes to the Client's operational and financial performance.
- 15.4.2 the disclosure or use of Confidential Information in the proper performance of the Agency's duties;
- 15.4.3 the disclosure of Confidential Information if required by law or regulation;
- 15.4.4 the disclosure of Confidential Information which has come into the public domain other than through unauthorised disclosure.
- 15.5 The restriction contained in this Clause shall not prevent any Agency personnel from using their own personal skill in any other Agency project in which they may lawfully be engaged after this Agreement has come to an end and the Client acknowledges that nothing in this Agreement shall affect the Agency's right to use as it sees fit any general marketing or advertising intelligence gained by the Agency in the course of its appointment.

- 15.6 In the event that Agency and client have entered into any other agreement that includes confidentiality undertakings to the other, the terms of this clause shall prevail.

## **16 Warranties and Indemnities**

- 16.1 The Agency warrants that it will perform the Services and discharge its obligations with reasonable care and skill.
- 16.2 Should either party or its employees sustain any loss or liability, costs (including legal costs) or damages as a result of the other's breach of this Agreement, the party in breach shall indemnify the other for all such costs and damages, subject to the provisions of Clause 17.
- 16.3 The Client warrants that all information supplied to the Agency before and during the Term will be accurate and not contravene any applicable law.
- 16.4 The Agency warrants that its personnel working on the Services are and shall be competent and suitable in every respect, whether as to qualifications, experience or otherwise, to perform the Services.
- 16.5 Both Parties warrant that they will not create or introduce into any Website any virus, worm, Trojan horse or other destructive or contaminating programme or advise any third party to do so and shall take all reasonable steps to prevent such events.
- 16.6 The Client warrants that it has the lawful right to appoint the Agency to carry out the Services in respect of the Accounts and Websites and will indemnify the Agency against all costs, expenses and liabilities which become due as a result of claims by any third party in respect of the Accounts or Websites.
- 16.7 Agency warrants that all Software shall be developed, installed and operated (where Agency is required to operate Software for the Client) in accordance with standard industry practices for programming, compiling, installing and operating software code for the Client. In the event of any defects reported by the Client to the Agency for a period of 30 days (Warranty Period") following transfer or installation of any Software, Agency agrees to use its reasonable endeavours to correct and install fixes to the relevant Software to correct such faults.
- 16.8 Following the Warranty Period in 16.7, Agency agrees to correct, fix and install faults within reasonable timeframes, giving due consideration to the Client's dependency on and criticality of any Software at a rate of £120 per hour, or such other rate as notified by Agency to Client, unless otherwise agreed by the parties.
- 16.9 The Client shall indemnify and keep the Agency indemnified against all proceedings, losses, liabilities, damages, charges and expenses (including legal expenses) of whatsoever nature arising out of or in connection with any action or claim that the content of any Website, Software, advertising campaign or any other materials provided to the Client by the Agency, or any advice given by the Client in the course of any form of communication between the Client and any visitor of a Website, (notwithstanding the fact that such material or advice may be factually correct or comply with industry and ethical standards) violates the provisions of this Agreement.
- 16.10 The Client shall hold harmless and indemnify and keep the Agency indemnified against all proceedings, losses, liabilities, damages, charges and expenses (including legal expenses) of whatsoever nature arising out of any written instruction properly given by the Client in accordance with this Agreement to advertise or bid upon search terms that may be construed to be registered trademarks of competitors, suppliers or resellers of the Client.
- 16.11 The Client shall hold harmless and indemnify and keep the Agency indemnified from and against all amounts of any and all claims, demands, losses, liabilities, damages, expenses (including reasonable attorney fees), fines, penalties, and other costs arising out of or related to any changes to sales taxes, duties, or other levies imposed by any relevant, legitimate authority, whether government or otherwise, subsequent to the execution of this agreement. The Client acknowledges and agrees that any such changes in sales taxes, duties, or other levies may impact the costs associated with the products or services provided by the Supplier. Therefore, the Client assumes full responsibility for any financial

implications arising from such changes and agrees to indemnify the Supplier for any resulting losses or damages incurred.

## **17 Limitation of Liability**

17.1 Nothing in this Agreement shall exclude or in any way limit the parties' liability for fraud, or for death or personal injury caused by its negligence or any other liability to the extent such liability may not be excluded or limited as a matter of law. Subject to this but including any liability arising under any indemnity under this Agreement:

17.1.1 The Agency's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, will in no circumstances exceed the fees paid by the Client for the Services provided by the Agency hereunder during the preceding 3 months of any bona fide and settled claim; and

17.1.2 The Agency will not be liable under this Agreement for any economic loss or any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

17.2 The Agency shall not be liable to the Client for any loss arising out of any failure by the Client:

17.2.1 to input and upload to any Website accurate and complete data;

17.2.2 to perform its obligations under this Agreement; or

17.2.3 to keep full and up-to-date security copies of the computer programs and data it uses in accordance with best computing practice.

17.3 This Agreement states the full extent of the Agency's obligations and liabilities in respect of the Services. The parties agree that any condition, warranty representation or other term concerning the Services which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.

## **18 Termination**

18.1 Either party may terminate this Agreement by service of notice in accordance with Clause 4.

18.2 Either party may terminate this Agreement forthwith by notice in writing to the other if the other party:

18.2.1 is in material breach of any of the terms of this Agreement and, in the case of a breach capable of remedy, fails to remedy such breach within 30 days of receipt of written notice giving full particulars of the breach and of the steps required to remedy it; or

18.2.2 passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or

18.2.3 becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or

18.2.4 has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or

18.2.5 ceases, or threatens to cease, to carry on business; or

18.3 The parties' rights, duties and responsibilities shall continue in full force during the agreed period of notice and the Client shall pay all sums due in respect of work done and expenditure committed and properly incurred in accordance with clause 11, 12 and 13 by the Agency until the end of the Term.

- 18.4 Upon the termination of this Agreement and payment by the Client of all items properly chargeable to the Client hereunder, the Agency will give the Client all reasonable co-operation in transferring, subject to the approval of third parties where required, all reservations, contracts and arrangements with media or others for space or time yet to be used and subject to, all rights and claims thereto.

## **19 Survival of Obligations on Termination**

The following clauses shall survive the end of the Term or proper Termination:

Intellectual Property Rights  
Confidential information  
Warranties and indemnities  
Limitation of liability  
Non-solicitation  
Notices  
Applicable law  
Dispute resolution

## **20 Data Protection**

- 20.1 The terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Personal Data Breach" and "Process/Processing" have the same meaning as described in any relevant and applicable Data Protection Laws.
- 20.2 Each party shall ensure that any personal data of any kind or type in any form supplied to the other party shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Act 1998 ("the Act") and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR") and any variations thereto which pass into law (the "Data Protection Laws").
- 20.3 The Parties shall use their best endeavours to ensure that the use of and collation of any personal information is in accordance with the Act and the E-commerce (Privacy and Electronic Communications) Regulations 2003.
- 20.4 the Client hereby appoints the Agency as Data Processor in relation to the Processing of Personal Data and the parties agree to act in accordance with their respective obligations under this Addendum.
- 20.5 The Agency warrants that it shall:
- 20.6 process Personal Data (as defined in the Data Protection Laws) only in accordance with reasonable instructions from the Client and in accordance with the provisions and principles of the Act and only to the extent, and in such manner, as is necessary for the provision of the Services;
- 20.7 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure; and
- 20.8 take reasonable steps to ensure the reliability of any of the Agency personnel who have access to the Personal Data and ensure that all such personnel are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause.
- 20.9 the Client warrants that it has all the necessary consents for the Agency to process the Personal Data in accordance with the Client's instructions.
- 20.10 The Client shall be responsible for all risks of loss or damage to its data except for any loss or damage caused by the negligence of the Agency. The Client shall indemnify the Agency against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or brought by any person in respect of any loss damage or distress caused to that person by breach of the provisions of clause 21.4 or any breach of the provisions of the Act by the Client, its staff or agents.

- 20.11 The Parties shall set out the subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subject as required by the provision of the Services as required by Article 28(3) of the GDPR or equivalent provisions of any Data Protection Laws.
- 20.12 In the course of providing the Services to the Client under the Agreement, the Agency shall observe all its obligations under the Data Protection Laws which arise in connection with the provision of the Services.
- 20.13 From the 25th May 2018, where the Agency processes Personal Data for the Client as a Data Processor, it shall:
- 20.14 process the Personal Data solely on the documented instructions of the Client, for the purposes of providing the Services;
- 20.15 process the Personal Data solely on the documented instructions of the Client, for the purposes of providing the Services; „Ä®
- 20.16 process only the types of Personal Data, relating to the categories of Data Subjects, and in the manner required to deliver the Services, as described in the form referred to in section 3; „Ä®
- 20.17 take all measures required by Article 32 of the GDPR to ensure the security of the Personal Data; „Ä®
- 20.18 take reasonable steps to ensure the reliability of any staff who may have access to the Personal Data, and their treatment of the Personal Data as confidential; „Ä®
- 20.19 not transfer the Personal Data to any country outside the European Economic Area (EEA) without the prior written consent of the Client; „Ä®
- 20.20 not permit any third party to Process the Personal Data without the prior written consent of the Client, such consent to be subject to the Agency meeting the conditions set out in Article 28 (2) and (4) of the GDPR; „Ä®
- 20.21 promptly notify the Client of any communication from a Data Subject regarding the Processing of their Personal Data, or any other communication (including from a supervisory authority) relating to either party's obligations under the Data Protection Laws in respect of the Personal Data; „Ä®
- 20.22 promptly, and in any case within 24 hours upon becoming aware, notify the Client of any Personal Data Breach, such notice to include all information reasonably required by the Client to comply with its obligations under the Data Protection Laws; „Ä®
- 20.23 upon requests, provide the Client with reasonable assistance in carrying out data protection impact assessments; „Ä®
- 20.24 permit the Client, on reasonable prior notice, to inspect and audit the facilities and systems used by the Agency to Process the Personal Data, the technical and organisational measures used by the Agency to ensure the security of the Personal Data and any and all records maintained by the Agency relating to that Processing;
- 20.25 provide any assistance reasonably requested by the Client in relation (i) any communication received under section 4.2.7, as well as any similar communication received by the Client directly; and (ii) any Personal Data Breach, including by taking any appropriate technical and organisational measures reasonably requested by the Client; and
- 20.26 cease Processing the Personal Data immediately upon the termination or expiry of the Principal Agreement and at the Client's option either return, or securely delete the Personal Data.
- 20.27 Any breach of this Addendum shall constitute a material breach of the Agreement.



- 20.28 Each Party shall indemnify and hold harmless the other against all losses, fines and sanctions arising from any claim by a third party or Supervisory Authority arising from any breach of this clause 20 by the Party which has committed a breach.

## **21 Waiver**

- 21.1 The failure of either party to enforce or to exercise at any time or for any period any term of or any right pursuant to this Agreement shall not be construed as a waiver of any such term or right and shall in no way affect that party's right later to enforce or exercise it.

## **22 Force Majeure**

- 22.1 Neither party shall be liable for any failure to perform or delay in performance of any of its obligations under this Agreement caused by circumstances beyond the reasonable control of a party to this Agreement (including a labour dispute between a third party and its employees) (a "Force Majeure Event").
- 22.2 The party claiming the Force Majeure Event shall promptly notify the other party in writing of its reasons for the delay or stoppage and its likely duration and shall take all reasonable steps to overcome the delay or stoppage.
- 22.3 If the party claiming the Force Majeure Event has complied with clause 23.2, its performance under this Agreement shall be suspended for the period that the Force Majeure Event continues and the party will have an extension of time for performance equal to such period. As regards the delay or stoppage arising from the Force Majeure Event:
- 22.3.1 Any costs arising from such delay or stoppage shall be borne by the party incurring those costs;
- 22.3.2 The party claiming the Force Majeure Event shall take all reasonable steps necessary to bring that event to a close or to find a solution by which its obligations under this Agreement may be performed despite the Force Majeure Event;
- 22.3.3 If the Force Majeure Event continues for more than 30 consecutive days, either party may terminate this Agreement with immediate effect on giving written notice to the other party and neither shall be liable to the other for such termination.

## **23 Non-solicitation**

- 23.1 The parties agree that neither of them will, unless otherwise agreed in writing, either on their own account or in partnership or association with any person, firm, company or organisation or otherwise and whether directly or indirectly during or for a period of 12 months from the end of the Term solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any key executive of the other party or person who is or has been part of the Agency team who has worked in the provision of the Services to the Client at any time during the last 12 months of the Term.
- 23.2 In the event that either party breaches this non-solicitation provision, the offending party agrees to pay the other party a sum equal to three month's salary that the offending party is to pay the employee.

## **24 Severance**

- 24.1 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable then such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. The parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

## **25 Assignment**

- 25.1 Neither party shall assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it without the prior written consent of the other party, such consent not to be unreasonably conditioned, withheld or delayed.

## **26 Third Party Rights**

- 26.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## **27 Entire Agreement**

- 27.1 This Agreement and the documents referred to in it (the 'Contractual Documentation') constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this Agreement.
- 27.2 The parties agree that neither of them has been induced to enter into any Contractual Documentation in reliance upon any warranty, representation, statement, agreement or undertaking of any kind (whether negligently or innocently made) of any person other than as expressly set out in this Agreement as a warranty. The only remedy available to the parties for breach of the warranties shall be for breach of contract under the terms of this Agreement and the parties unconditionally and irrevocably waive any other claims, rights or remedies that may otherwise be available. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.
- 27.3 No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

## **28 Notices**

- 28.1 Any notice, invoice or other communication which either party is required by this Agreement to serve on the other party shall be sufficiently served if sent to the other party at its specified address (or such other address as is notified to the other party in writing) as follows:
- 28.1.1 by hand;
- 28.1.2 by registered or first-class post or recorded delivery; or
- 28.1.3 by facsimile transmission confirmed by registered or first-class post or recorded delivery; or
- 28.1.4 to the relevant representatives work electronic mail address and acknowledged by the receiving party.

Notices sent by registered post or recorded delivery shall be deemed to be served three (3) Working Days following the day of posting. Notices sent by facsimile transmission or electronic mail shall be deemed to be served on the day of transmission if transmitted before 4.00 p.m. on a Working Day, but otherwise on the next following Working Day. In all other cases, notices are deemed to be served on the day when they are actually received.

## **29 Governing Law and Jurisdiction**

- 29.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales.
- 29.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement.

**30      Dispute Resolution**

- 30.1      Save as for invoice disputes, if any claim or dispute arises under or in connection with this Agreement, the parties will attempt to settle such claim or dispute by negotiation.
- 30.2      If any claim or dispute cannot be settled by negotiation within 21 days after either party has made a written offer to the other party to negotiate a settlement to such claim or dispute, the parties shall, before resorting to court proceedings, attempt to resolve the claim or dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 30.3      If the parties have not settled any claim or dispute by mediation within 42 days from the initiation of the mediation, the dispute shall be referred to and finally resolved by the courts in accordance with clause 29.

## DEFINITIONS AND INTERPRETATION

1. The following words and phrases shall have the following meanings (except where the context otherwise requires):

Term	Meaning
Account Manager	Means the Agency's representative appointed under clause 5.3 of this Agreement and advised to Client from time to time.
Accounts	Means those products and/or services of the Client listed in Schedule 2;
Agency Material	Means all material created and prepared by the Agency in providing the Services under this Agreement, including software tools, templates, Search Engine marketing documents, templates, guidelines and written instructions;
Agreement	This Agreement and any written variations hereto, signed by the authorised representatives of the Parties.
Commencement Date	Means the date of the Agreement;
Confidential Information	Means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the Agreement and: <ol style="list-style-type: none"> <li>i. which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998); or</li> <li>ii. the release of which is likely to prejudice the commercial interests of the Agency or the Client respectively; or</li> <li>iii. concerns the business, business plans, customers or associated companies of the Agency or the Client respectively; or</li> <li>iv. any trade secrets or other information which is confidential, commercially sensitive relating or belonging to the Client including but not limited to information relating to the business methods, corporate plans, management systems, finances, new business opportunities, research and development projects, marketing or sales of any past, present or future product or service, secret formulae, processes, inventions, designs, know-how discoveries, technical specifications and other technical information relating to the creation, production or supply of any past, present or future product or service of the Client, lists or details of clients, potential clients or suppliers or the arrangements made with any client or supplier and any information in respect of which the Client owes an obligation of confidentiality to any third party.</li> </ol>
Expense	Expenditure incurred with the Client's prior written agreement when such expenditure is procured on the Client's behalf by the Agency, including 3 <sup>rd</sup> party purchased website links and software tools.
Project Agreement (s)	Means any written agreements between the Parties for the Agency to provide Services and the Client to pay fees, specifying the services to be provided by the Agency and the amount of the timing of the fees to be paid by the Client for such services and signed by the Agency's Account Manager and Client's Representative.
Rights	Means any copyright, extended or revived copyright, design right, registered design right, patent, performer's property right, trademark, database right or any similar right exercisable in any part of the world, including any application for

registration of any patent, trademark, registered design or similar registerable rights in any part of the world;

Services	Means those services the Agency will perform for the Client and specified in the Project Agreement included in Schedule 2, or any other Project Agreement agreed between the Parties,
Software	Means any proprietary software in object code and source code format, together with all programming documentation, data, information, pictures, images (whether moving or static) and reports of the Client used in the provision of the Services by the Agency (including any sub-routines, sub-elements or other generic parts of such software which constitute the "building blocks" of the underlying code)
Specification	Means any specification produced by either party and agreed with the other;
Term	Means the period from the Commencement Date until the proper termination of this Agreement;
Territory	Means the territory defined in Clause 3;
Third Party Software	Means any software owned by a third party used in the provision of the Services (including any sub-routines, sub-elements or other generic parts of software which constitute the "building blocks" of the underlying code and including any Open-Source Software);
Website(s)	Means all pages of the Client's website(s) established with the URL(s) specified in the Specification.
Working Day	Means a day (other than a Saturday or a Sunday) on which the clearing banks in the City of London are open for business;

2. In this Agreement (except where the context otherwise requires) the clause headings are included for convenience only and shall not affect the interpretation of this Agreement, use of the singular includes the plural and vice versa and the use of any gender includes the other genders.
3. The Project Agreements agreed separately by each of us form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Project Agreements.
4. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended extended or re-enacted and to any subordinate legislation made from time to time under that provision.