

1. SERVICES

1.1. Theyescreative Ltd. ('the Supplier') shall provide Services subject to these conditions. Any change to the Services or these conditions must be agreed in writing by the Supplier.

1.2. This agreement shall commence on the date set out on the execution page of this agreement and continue until the Customer has accepted the agreement delivered by the Supplier, or until earlier termination as provided for under the terms and conditions of this Agreement.

2. QUOTATION

2.1. For each project or retainer ("Project"), we will provide a written quotation or proposal, which, subject to these terms, will include details of the Services/Goods, stages, timings, fees and expenses.

3. THE SUPPLIER'S OBLIGATIONS

3.1 During the term of this Project the Supplier shall ensure that they:

- (a) reasonably devote such time, attention and abilities to the Customer's business as may be necessary for the proper provision of the Services;
- (b) faithfully and diligently carry out all agreed Services for the Customer;
- (c) provide the Services and take all reasonable steps to comply with any agreed timescales or other targets for progress, delivery and/or completion of the Services agreed between the Supplier and the Customer;
- (d) be responsible for ensuring that any Consultants provided are and remain adequately qualified to perform the Services, and for all necessary costs of training;
- (e) use the Customer's hardware, networks and software only as authorised, for the purpose of the Customer's business and for no other purpose;
- (f) observe the laws of the Country in which the Supplier and/or consultants are based and/or is working and refrain from causing offence to any civil or religious institutions or practices or its inhabitants;
- (g) the Customer understands and accepts that the Supplier is entitled to seek, apply for, accept and fulfil contracts to supply good and services to other parties, excluding the Customer in this contract, during the currency of this agreement.
- (h) The Supplier is free to enter into other contracts with other third parties at any time before, after or concurrently with the contract for services.

4. FEES AND ADDITIONAL COSTS

4.1. The Fees cover the costs of those Services expressly set out in this agreement and expenses related thereto. The Supplier reserves the right to charge on a time and materials basis for any other work or services requested by the Customer in addition to the work set out in the Services, and in respect of all work carried out by the Supplier prior to termination of this agreement by either the Customer or Supplier.

4.2. Invoices are due for payment within 30 days after invoice date by BACS.

4.3 All payments shall be invoiced and made in sterling unless otherwise agreed in writing (in which case, the foreign currency figure must be calculated as on the date of remittance and the Customer will reimburse the Supplier for any loss arising from currency fluctuations and any currency exchange costs).

4.4 VAT will be added on invoices, where appropriate, at the prevailing rate.

4.5 The Supplier may charge interest on amounts not paid at the due date, to accrue daily at the rate of 4% per annum above the base rate set by the Bank of England. Where the Supplier faces surcharges from any third party supplier on amounts not paid by the due date as a result of late payment by the Customer, the Customer will reimburse the Supplier the amount of such surcharge/interest charged by the third party supplier. Where any invoices are outstanding, the Supplier reserves the right to refuse to place third party orders on the Customer's behalf until these are paid, to suspend any associated work without liability to the Customer and/or to require payment in advance for any future Services/Goods.

4.6. The Customer agrees that any initial/deposit payments made by the Customer are non-refundable in event of termination of this Agreement.

4.7. In the event that the Customer delays delivery to the Supplier of the Materials (as defined in the 'WARRANTIES' clause), so that we are prevented from progressing the project, the Supplier reserves the right to invoice the Customer for the outstanding balance amount of the Fees.

4.8. In the event that the Customer request the Supplier to provide additional services not listed in the quotation or the Customer request the Supplier to provide additional services that would take longer to complete than the time specified in the Quotation, then the Supplier will provide a fixed price quotation for this work before we commencement.

4.9. Repeating payments will be made via payment of monthly invoices by standing order on the agreed date.

4.10. The Supplier reserve the right to charge on a time and materials basis for any other work or services not outlined in the Quotation, requested by the Customer including file backups and transfer costs, prior to termination of this agreement by either the Customer or the Supplier.

4.11. The Supplier reserve the right to increase their fees and rates annually in line with the Retail Prices Index.

4.12 Every 30 days from the commencement date, the Supplier will send to the Customer all completed weekly worksheets and if the agreement is in place monthly invoices.

5. THIRD PARTY COSTS

5.1. Production costs and other third party charges (including without limitation photography, printing, software licensing and web-hosting) will be invoiced in addition to the Supplier fee and a written quote is to be provided for additional services at proposal stage, or as ad hoc services if added on at a later date.

6. AMENDMENTS

6.1. Any amendment to a Project must be agreed in writing. The Supplier will be entitled to charge as quoted on a fixed price basis. The Customer will reimburse the Supplier for any additional third party costs imposed as a result of any agreed quotation and subsequent amendment. [For minor design changes that do not alter the agreed Project scope, the Supplier may charge additional fees if more than six iterations of a design element are required or, where reasonable, in other circumstances.]

7. SIGN OFF

7.1. It is the Customer responsibility to check and approve material that the Supplier submit to the Customer for this purpose at various points, whether as part of an approval stage identified in a Proposal or otherwise. These may include without limitation elements such as text, photography and artwork and:

- (a) for printed materials, colour proofs, digital proofs, form proofs and running sheets;
- (b) for work in electronic form, interim masters, grid masters and beta-testing sites; and
- (c) for audio-visual work, scripts, storyboards, offline edits, online edits, final edits and completed masters.

The Supplier shall not be responsible for any errors or other matters in material that the Customer have approved. The Supplier shall not be obliged to start any stage until the Customer have approved its commencement. Where the Supplier request approval in writing (including by email) for any matter, approval shall be deemed given if the Customer do not respond in writing to the contrary (including by email) within five working days.

8. AUTHORITY

8.1. Unless the Customer indicates in writing, whether in a Proposal or otherwise, that certain individuals only are entitled to give approvals for the purposes of these terms or for any particular Project, the Supplier shall be entitled to assume that any of the persons dealing with the Supplier on behalf of the Customer organisation may do so.

9. CONTACT REPORTS

9.1. The Supplier will provide the Customer with contact reports of key matters discussed at meetings or in telephone conversations. Unless questioned by the Customer within three working days after email receipt, each contact report will be taken as an accurate record.

10. FURTHER OBLIGATIONS

10.1. The parties shall cooperate in good faith with each other in the provision and acceptance of the Services and shall report to each other any suspected faults in the Services which either party may become aware of as soon as such suspected faults come to such party's attention. The Customer shall be deemed to have accepted the project deliverables 10 days after delivery to the Customer. Maintenance and marketing retainer services are excluded from this clause. In the event that the Customer bring to the Supplier attention such material defects which require fixing during such 10 day period, then the Supplier shall have the right to fix those material defects within a reasonable time.

10.2. The Customer shall not use the Services or any domain or username as to impersonate any other entity or to infringe the rights of any other person, whether statutory or common law, in a trademark or name.

10.3. In the event that the Customer require the Supplier to integrate any third party item or service, then the Customer undertake to ensure that the third party will provide such input and assistance as is necessary to enable the Supplier to perform its obligations under this Agreement in a timely manner. The Customer agree that any failure on behalf of the third party to do so will be a Force Majeure Event.

11. CREDIT AND PUBLICITY

11.1. The Customer agree that the Supplier shall be entitled to due acknowledgement in respect of work provided by the Supplier, whether created wholly or partly to our design or with the benefit of our Services. Unless otherwise agreed in writing, this will include a written credit with reasonable prominence within selected materials, including without limitation a credit at the bottom of the homepage for any website design/build work. For the purpose of showcasing Supplier Services the Supplier shall be entitled following written agreement which will not be unreasonably withheld at any time to use all or part(s) of any such work that has ceased to be confidential in such media as the Supplier may require. Following the cessation of this agreement the Supplier agree that all references to Supplier work on this site will be deleted.

12. WARRANTIES

12.1. The Customer warrant and undertake that any items made available to the Supplier for the purposes of performing this agreement shall not infringe the intellectual or like proprietary rights (together "IPRs") of any third party. To the extent that the storage, reproduction,

broadcast or transmission of the Material or any messages or other communications shall entitle third parties (including without limitation collecting societies such as Performing Right Society and the Mechanical Copyright Protection Society, and their equivalents in any part of the world) to any payments in relation to such storage, reproduction or transmission, such payments shall, as between the Customer and the Supplier, be borne by the Customer.

12.2. The Supplier warrant that the Work will be provided with all due reasonable care and skill and in a professional and timely manner.

12.3. Except as set out expressly in this agreement, the Supplier make no representations, terms, conditions or warranties either express or implied, by statute or otherwise, in relation to the Works or the provision of the Services (or any other service provided under this agreement), including but not limited to implied warranties, conditions or other terms of completeness, accuracy, satisfactory quality and fitness for a particular purpose and that all such representations, terms, conditions and warranties are expressly excluded.

13. CLEARANCES

13.1. Any material that the Supplier create or provide will not infringe any third parties IP – if it does the Supplier are liable and will fix free of charge.

13.2. The Supplier will not investigate as to whether any material the Customer create or provide to the Supplier (including without limitation designs, brands, creative work and software) may infringe third party rights or fail to comply with laws or regulations (in each case “Infringement”). The Supplier give no warranty and accept no liability in relation to such risks. It shall be the Customers sole responsibility to ensure that any such material used by the Customer or on the Customers behalf shall not give rise to any Infringement. Where the Supplier do agree to source investigations, these shall be subject to additional charges and limited to the UK unless otherwise agreed in writing. Where these are carried out by a third party, the Customers remedy in the event of any results being inaccurate or incomplete shall be against the provider rather than against the Supplier.

14. EXCLUSION AND LIMITATIONS

14.1. The Customer agrees that the Supplier shall not be liable in contract, tort, negligence, statutory duty or otherwise for either

- (a) any indirect, consequential or special loss or damage, or any loss of profit, business or goodwill, whatever arising from or in connection with this agreement, or;
- (b) direct loss or damage greater than the aggregate of all sums paid to the Supplier under this agreement.

14.2. Nothing in the agreement shall exclude:

- (a) either party’s liability for death or personal injury arising from that party’s negligence or that its servants, agents or employees acting in the course of their duties; or
- (b) any other liability which it is prohibited by law.

15. DATA PROTECTION

15.1. The Customer hereby warrant and undertake that, as regards any Personal Data as defined in the Data Protection Act 1998 (“the Act”) which is or is to be stored or processed or dealt with in any way hereunder, the Customer are and will continue to be the data controller (as defined in the Act) in respect of such Personal Data. and the Customer shall maintain notification in respect of the same under the Act and will at all times comply with the provisions of the Act insofar as they concern such data and the proper performance by the Supplier of their obligations thereunder or of any additional services which the Supplier may provide at the Customer’s request shall not result in any offence being committed or liability arising to the Supplier under the Act.

16. CONFIDENTIALITY

16.1 The supplier and its Employees, Freelancers and Consultants shall not at any time during or after the term:

- (a) Divulge or allow to be divulged to any party any confidential information relating to the business or affairs of the Customer; this obligation of confidentiality will remain in force beyond cessation or other termination of this Agreement;
- (b) Undertake any deliberate act or conduct causing or calculated to cause damage to the reputation of the Customer or endanger the commercial security of the Customer;
- (c) Divulge or allow to be divulged to any person the terms and conditions of this Agreement, with the exception of any necessary professional advisor.

17. INTELLECTUAL PROPERTY RIGHTS

17.1. The Customer shall grant the Supplier for the term of this agreement a royalty free licence to use, copy, modify, publish and otherwise deal with the Materials in the manner contemplated by this agreement.

17.2. The Supplier acknowledge that all IPRs in the Materials will remain Customer property. Safe to the extent of Supplier Items or the subject matter of third party licences, all IPRs in the Works shall vest in the Customer upon Supplier receipt of all payments due and payable under this agreement and final acceptance of the website/design work by the Customer.

17.3. If any third party software is used in the provision of the Services, then each party will be responsible for ensuring that they have a licence to use such third party software as envisaged by this agreement.

17.4. Save as provided above the IPRs in the Materials will remain the Customer property.

18. INDEMNITY & INSURANCE

18.1. The Supplier shall indemnify and keep the Customer fully and effectively indemnified from and against all liabilities, costs and expenses (including reasonable legal costs and expenses) which is awarded against the Customer by a Court of competent jurisdiction resulting from any claims or allegations brought by a third party that the Supplier provision of the Services and the Works under this agreement infringes the IPRs of such third party: provided always that;

- (a) The Customer give the Supplier prompt notice of any such claim or allegation; and
- (b) The Customer make no admissions or statements in relation to any such claim or allegation; and
- (c) The Customer grant the Supplier control of the negotiations and/or settlement of any such claim or allegation and provide the Supplier with all reasonable assistance we may request of the Customer in relation to such negotiation or settlement. In the event that the Supplier replace any item of Work or Services such that the same is no longer infringing, The Supplier shall have no further liability to the Customer in respect of any related third party claim.

18.2. The Customer shall indemnify and keep the Supplier fully and effectively indemnified from and against all liabilities, costs and expenses (including reasonable legal costs and expenses) resulting from any claims or allegations brought by a third party that the Supplier use of the Materials under this agreement infringes the IPRs of such third party.

18.3. It is warranted by the Supplier that the following insurances will be held for the duration of this agreement and for the following 12 months:

- (a) Professional Indemnity Insurance with a limit of indemnity of £1,000,000 in the aggregate
- (b) Public Liability Insurance with a limit of indemnity of £1,000,000
- (c) Employer's Liability Insurance with a limit of indemnity of £10,000,000
- (d) Cyber & Data Insurance with a limit of indemnity of £500,000

18.4 the Supplier will agree to produce proof of such insurances upon demand.

18.5 th Supplier will rectify any incorrect or unsatisfactory work which can be attributed to an error or an omission on the part of the consultant at the reasonable request of the Customer and as such must be performed in the Supplier's own time and without extra charge.

19. LIABILITY - DIGITAL WORK

19.1. The Supplier shall take all reasonable precautions in seeking to ensure that no known viruses for which detection and antidote software are available are introduced into the Customer software as a result of Supplier Services. And will, at no cost to the Customer, take the necessary actions to rectify the website in the event of any virus infection.

19.2. With digital work, the Supplier rely on the Customer to provide in advance all relevant information as to the IT environment in which it is intended to function. The Supplier will not be liable for any matters arising from failure by the Customer to do so or from any change in such regard (unless agreed in writing in advance).

19.3. Further, the Customer acknowledge that digital content (including without limitation software, DVDs and encoded/streamed video for internet/intranet) cannot be tested in every possible combination and operating environment, that not all errors are necessarily capable of rectification and that the existence of such errors shall not constitute a breach of these terms.

19.4. Unless otherwise agreed in writing, the Services do not include support and maintenance of third party software and the Supplier give no warranty or representation that any third party software (or other third party elements) will continue to be suitable or that any support will continue to be available. Where cloud computing solutions (and other distributed storage/processing solutions) are used, the Customer acknowledge and accept the increased risk of the integrity and security of information being compromised. The Supplier shall have no liability in relation to such risks. The Supplier will inform you in advance if they propose to use any such solution.

20. ENTIRE AGREEMENT

20.1. Neither party has entered into this agreement on the basis of, or has relied on, any statement or representation (whether negligent or innocent) except those expressly contained in this agreement. This paragraph shall not apply to any statement or representation made fraudulently.

20.2. This agreement constitutes the entire understanding between the parties concerning the supply and use of the Services, and replaces, supersedes, and cancels all previous arrangements, understanding, representations or agreements relating thereto. These terms shall apply and prevail over any terms and conditions (whether conflicting or not) contained or referred to in any documentation submitted or provided by the Customer.

21. NO PARTNERSHIP

21.1. Nothing in this agreement shall create a partnership or joint venture between the parties and except as expressly provided in this agreement, no party shall enter into or have authority to enter into any engagement or to make any representation or warranty on behalf of or to pledge the credit of or otherwise to bind or oblige the other party.

22. THIRD PARTY RIGHTS

22.1. A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

23. NOTICES

23.1. Any notices required to be given under this agreement shall be in writing and shall be sent by first class registered post, recorded airmail, email, fax or by hand, at the address specified in this agreement.

24. APPLICABLE LAW

24.1. The construction, validity and performance of this agreement shall be governed by the laws of England and Wales and this agreement shall be subjected to the exclusive jurisdiction of the English courts.

25. CHANGES TO THIS AGREEMENT

25.1. Any changes to this agreement shall be made in writing executed by the parties' duly authorised representatives.

26. TERMINATION

67.1 This agreement shall terminate:

- (a) On the expiry date or completion of the services; or
- (b) On the Customer giving the Supplier not less than 30 days' prior notice. If notice of termination is given by the Customer, the Customer will allow the Suppliers Contractors to work and be paid for in accordance with the daily rate
- (c) In the event that the termination is caused by the Supplier's failure to exercise all reasonable care and skill in relation to its appointment then such termination will be without notice with all fees earned up to and including the date of termination to be paid.
- (d) The Customer or the Supplier have the right at any time to terminate this agreement by notice in writing to the other party in the event of a serious breach of the terms of this agreement which otherwise cannot be resolved by any reasonable means available by the other party; or
- (e) At any time by the Customer if the Supplier fails to undertake the services to the Customer with the degree of technical knowledge and technical skill reasonably expected of a Supplier required to perform the services detailed in schedule 1. All earned fee up to and including the date of termination will be paid in accordance with clauses 4.2; or
- (f) At any time in the event of the Customer becoming bankrupt or being made the subject of a winding up Order or upon the appointment of a Receiver or Manager or the Customer entering into an arrangement with its creditors. The engagement shall determine forthwith without any compensation or right to damages or further payment; or
- (g) If the Customer terminates this contract the Customer will pay notice in accordance with terms 26.1(b) and all outstanding and earned fees up to and including the date of termination and in accordance with clauses 26.1

27. TERMINATION CONSEQUENCES

27.1 On expiry or other termination of this Agreement or at the end of Term, whichever arises sooner, the Supplier undertakes:

- (a) To deliver to the Customer all correspondence, documents and property belonging to the Customer which may be in the Supplier's possession or under its control;
- (b) To deliver to the Customer all information and Customer contact details in its possession relating to opportunities to sell the Customer's products and services;
- (c) To confirm in writing within 7 days that all information held electronically by the Supplier or Suppliers representatives, agents or subcontractors relating to Services under this contract has been permanently destroyed;
- (d) To immediately cease working at the agreed location(s)

27.2 On expiry or other termination of this Agreement other than as described in clause 26.1 (f) the Customer undertakes to pay to the Supplier all arrears of Payments and earned (authorised work only) but not yet paid fees up to and including the Expiry Date or date of termination if prior to the Expiry Date.