

Pink Inc Creative Ltd –Terms & Conditions

The following sets out the terms and conditions on which Pink Inc Creative Ltd (the 'Company') will provide web design services, email marketing, branding, print design and or social media services to Clients who have agreed to purchase them ('the Client').

1. Definitions

'Acceptance Date' means the date on which the Company in its sole discretion deems the Website/project is ready to go live

'Additional Services' means any additional services requested by the Client to be provided by the Company;

'Change Request' means a request for a change made by the Client or the Company;

'Confidential Information' shall include but not necessarily be limited to all information which is not publicly known including the business, finances, technology, trade secrets and any other commercially sensitive information of either party regardless of its nature;

'the Customer Representative' means the person for the time being or from time to time duly appointed by the Client and notified in writing to the Company to act as the Client's representative for the purpose of these Terms and Conditions;

'GDPR' means the General Data Protection Regulations;

'Intellectual Property Rights' means all copyright and other intellectual property rights howsoever arising and in whatever media whether or not registered including but without limitation patents, trademarks, service marks, trade names, registered design and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world;

'Price' means the fee payable to the Company for the provision of the services as set out in the Proposal;

'Proposal' means the specification of the Services to be provided by the Company and including the Price for the provision of same and which is valid for 30 days from the issue of same;

'the Services' means the services provided to the Client by the Company as specified in the proposal;

'Snagging Period' means a period of 2 weeks after the Acceptance Date during which the Client may raise notice of any defect in the Services.

'Visitor' means with respect to web design, a third party who has accessed the Website;

'these Terms and Conditions' shall, unless the context otherwise requires, mean this document and includes the Proposal;

'Website' means the intranet and or extranet site known under the domain name supplied by or on behalf of the Client and such other additional websites and domain names as the parties shall agree upon from time to time.

2. Basis of contract

2.1 These terms of business together with any Proposal shall form the contract between the Client and the Company in connection with the services to be supplied.

2.2 No contract shall come into being until:

2.2.1 the Company has received an acceptance of the Proposal from the Client, or

2.2.2 the Company has commenced performance of the applicable Proposal, and

2.3 For the avoidance of doubt the Company will not provide any maintenance and or technical support to the Client. With respect to web design only, the Company may in its sole discretion provide some website maintenance on an ad hoc basis and in respect of which the Company will charge the Client a rate applicable at that time. The Company can instruct a third party provider at its sole discretion to provide maintenance and or technical support and or any of the services set out in the proposal.

2.4 For the further avoidance of doubt the Company will not have access to nor store nor in any other manner control nor process any personal data as defined in the GDPR and or the Data Protection Act 1998.

3. Charges and expenses

3.1 In consideration of the Company carrying out the Services the Client shall pay to the Company the Price plus VAT and any other relevant taxes, charges, fees and levies which in each case shall remain the responsibility of the Client and subject to the terms set out in this clause and clauses 2 and 4.

3.2 The Company in its sole discretion may require the Price to be paid by the Client in staged payments to be determined by the Company. The Company will determine in its sole discretion that each stage has been completed. In the event that payment for each stage has not been made by the Client, the Company reserves the right to exercise its rights under clause 4.8.

3.4 Expenses and disbursements will be the Client's responsibility and will be shown separately on invoices. The Company is under no obligation to make such payments unless the Client has provided the funds to do so.

3.5 With regard to social media marketing, the Company will provide a marketing plan deliverable over a 12 month cycle as set out in the Proposal. Payment will be made on a monthly basis. Any over

payment by the Client may be refunded entirely at the discretion of the Company or can be applied in respect of costs for the following year.

4. Terms of Payment

4.1 Payment of all sums due by the Client to the Company shall be made within 30 days of the date of the invoice from the Company. Invoices shall be paid in full without any deduction, set off or counterclaim.

4.2 Charges shall be expressed and payments made in Pounds Sterling unless otherwise agreed between the parties.

4.3 All amounts stated are exclusive of VAT and any other applicable taxes, which will be charged in addition at the rate in force at the time the Client is required to make payment.

4.4 Any invoice disputes shall be raised in writing by the Client within 7 working days of receipt.

4.5 The Company is permitted to charge for all costs and expenses incurred in performing the Services, including but not limited to travelling, photocopying, courier services, postage.

4.6 The Company shall be entitled to invoice the Client as specified in the Proposal.

4.7 When making a payment the Client shall quote relevant reference numbers and the invoice number.

4.8 If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in these Terms and Conditions, the Company shall be entitled:

4.8.1 to reserve the right to exercise its statutory right to interest under the Late Payment of Commercial Debts (Interest) Act 1988.

4.8.2 to require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed;

4.8.3 not to perform any further Services (or any part of the Services).

4.8.4 to have a lien over any product, data or materials. The Company reserves the right to withhold supply of goods and, in the case of web services, this includes recalling services including the hosting of websites.

5. Domain names email accounts

5.1 Any domain name sought by the Client as part of these Terms and Conditions may subject to availability and applicable terms be acquired by the Company for and on behalf of the Client subject to these terms and conditions and those imposed on the use of the domain name by the domain name registry and any applicable rules and regulations relating to the use of such names as may be in force anywhere in the world from time to time.

5.2 The Company shall be the registered owner of the domain name and shall be responsible for all fees associated with the acquisition of the domain name together with all renewal fees and other outgoings associated with the domain name. The Company will invoice the Client in respect of those costs as set out in the Proposal

5.3 The Client shall be responsible for the setting up and maintenance of any and all email accounts.

5.4 The Company provides hosting services via third party hosting providers.

6. The Client's Obligations

6.1 The Client shall:

- 6.1.1 make available to the Company, free of charge, such computer facilities office and secretarial services as are necessary to enable the Company to carry out its obligations under these Terms and Conditions;
- 6.1.2 ensure that its employees and other independent contractors cooperate reasonably with the Company and its employees in carrying out the Services;
- 6.1.3 promptly furnish the Company with such information and documents as it may reasonably request for the proper performance of its obligations under these Terms and Conditions;
- 6.1.4 ensure that the Client Representative is available as reasonably required by the Company;
- 6.1.5 ensure that it provides the Company with the Client's own privacy and cookie policies for inclusion in any project. For the avoidance of doubt, the Company will not supply any privacy or cookie policies for incorporation in any project or in the provision of any services by the Company to the Client.
- 6.1.6 ensure that it creates a mailchimp or other third party service provider in order to upload databases for the creation and delivery of emailer marketing devices. The company will provide design services based on a blank skeleton emailer without the inclusion of any personal data as defined in the GDPR and the Data Protection Act 1998.
- 6.1.7 proof read and approve all content whether provided by the Company and or any third party;
- 6.1.8 advise the Company at the earliest opportunity of any fact, matter or thing which the Client may become aware and which may affect the Company's obligations under these Terms and Conditions; and
- 6.1.9 not to do anything which might at any time give rise to a breach of the warranties set out in clause 9.

6.2 If the Client's website is to be installed on a third party server the Client shall grant temporary read/write access to the Client's storage directories which must be accessible via FTP.

7. Change request

7.1 If either party identifies a requirement for a change, a Change Request will be sent to the other party detailing the change requirements and if sent by the Client contain the information and be in

the form which shall be issued by the Company upon request. If sent by the Company the Change Request shall state the effect such a change shall have on the Services and the Price. If sent by the Client the receipt of the Change Request by the Company will constitute a request to the Company to state at the Client's cost in writing the effect such a change shall or could have on the Services and the Price. The Company shall if reasonably practicable supply the necessary details within an agreed timescale from the receipt of the Change Request or such other period as it may notify to the Client.

7.2 The parties shall, unless they agree otherwise in writing, meet within an agreed timescale of the delivery to the Client of the information referred to in clause 7.1 for the purposes of discussing in good faith if, and to what extent, the Change Request should be implemented. If at the end of this meeting it is agreed that the Change Request should be implemented then the party who so requested the change shall confirm this in writing.

7.3 The Company shall not implement any changes unless instructed to do so by the Client Representative.

7.4 If the parties are unable to reach agreement concerning the Change Request then:

7.4.1 the Company shall continue to work on the Services as originally set out in the Proposal and in accordance with these Terms and Conditions; or

7.4.2 either party may terminate these Terms and Conditions by serving notice of the same on the other in which case the Client shall be liable to the Company for all costs incurred by the Company up to the date of such termination plus 20%.

8. Client Representatives

The Client shall nominate in writing the person or persons who will act as its authorised representative(s) for the purposes of these Terms and Conditions and who will be responsible for providing any information which may be required by the other party to perform its obligations under these Terms and Conditions.

9. Warranties

9.1 The Company warrants that:

9.1.1 as regards the design of a website, that the website shall perform substantially in accordance with the Proposal, minor interruptions and errors excluded;

9.1.2 the performance of the Services will be carried out in a professional manner conforming to generally accepted industry practices.

9.2 The Company shall not be liable under clause 9 if a failure to meet the warranties set out therein is caused by:

9.2.1 modifications or customisation made by or on behalf of the Client to the subject of any of the Services without the written authorisation of the Company or where such

- authorisation is given with conditions those conditions were breached;
- 9.2.2 any service which is provided by any third party; or
- 9.2.3 a breach by the Client of the Client warranties set out in clause 9.4.

9.3 If the Company receives a written notice from the Client identifying a breach of the warranties set out in clause 9.1 then the Company shall at its own expense promptly remedy such breach or failure provided that the Company shall have no liability or obligations under the warranties unless it shall have received written notice of the defect or error within the Snagging Period.

9.4 the Client warrants that:

- 9.4.1 it is entitled to enter into a contract with the Company and that by doing so it is not in breach of any third party rights or contractual obligations;
- 9.4.2 it will not do or omit to do any act or thing which might impede or otherwise adversely impact on the Company's ability to perform its obligations under these Terms and Conditions or which otherwise does or might adversely affect the Services;
- 9.4.3 any equipment which it provides to the Company for testing or live running of the Services is sufficiently capable of testing and or running the Services;
- 9.4.4 it has complied and will throughout the duration of the contract comply with its obligations under the Data Protection Act 1998 and the General Data Protection Regulations (GDPR) in respect of any data which it may transmit or otherwise pass on to the Company for processing as part of the development of the Services and that without prejudice to the foregoing it has sought those consents necessary as to enable the Company to lawfully process any information relating to a third party whether an individual, business or corporate entity;
- 9.4.5 it is the owner or lawful licensee of the Intellectual Property as the same may reside in all images, pictures, trademarks, logos, catch-phrases, visual effects, sounds and other visual and audio sequences (together the 'Imagery') as may be used in the development of the Services and that the use of such Imagery will not breach any third party's Intellectual Property;
- 9.4.6 it has not nor will not photoshop or in any way alter any photographs or other images which it supplies or requests a third party to supply to the Company;
- 9.4.7 the use of the Imagery will not breach any laws or regulations as the same relate to obscenity, decency and or defamation;
- 9.4.8 it has sought regulatory and legislative consents as are necessary to enable it to operate the Services;
- 9.4.9 all information and material which it provides to the Company is accurate, up to date and sufficient for the purposes for which it intends to use the Services;
- 9.4.10 it will when operating the Services observe and perform all those laws, regulations and codes of practice applicable to such use;
- 9.4.11 it does and will continue to use up to date industry recognised anti-virus software;
- 9.4.12 it will seek its own legal advice in respect of terms and conditions of use for its web site;
- 9.4.13 with regard to social media marketing, it will either provide approval of a marketing plan when requested to do so by the Company or it will provide complete autonomy to the Company in the design and or delivery of any social marketing plan;

9.4.14 it will not employ, offer to employ, or otherwise entice or attempt to entice away any employee, officer or other representative of the Company save that this restriction shall not apply upon the expiry of 12 months following the later of termination or completion of the Proposal;

9.4.15 it has not done nor shall not do any act or thing that contravenes the Bribery Act 2010 or any other applicable anti bribery or anti money laundering laws and or regulations; and

9.4.16 it shall immediately notify the Company in writing on becoming aware or suspecting any failure to comply with clause 9.4.15. Any failure by the Client to comply with clauses 9.4.15 and 9.4.16 shall entitle the Company to terminate the Contract immediately at no cost, liability or penalty to the Company and without prejudice to any other rights or remedies that may have accrued to the Client's benefit under or in connection with the Contract.

9.5 If the Client receives a written notice from the Company identifying a breach of the warranties set out in clause 9.4 then the Client shall, at its own expense promptly remedy such breach or failure or otherwise hold the Client harmless against such breach.

10. Design credit and copyright

10.1 The Company shall be entitled to place within (both as an audio-visual image and hard copy imprint) the website such trademarks, trade names, logos, images and other graphics which identify the Company with the development of the Services and similarly to place hyperlinks to the Company's website. The Client also agrees that the Services developed for the Client may be presented in the Company's design portfolio.

10.2 Copyright of all graphic design work is retained by the Company including copy, concepts, ideas, proofs and illustrations (unless specifically released in writing) until after all invoices have been paid in full.

10.3 If multiple design concepts are submitted, only one concept is deemed to be given by the Company as fulfilling the contract. All other artwork designs remain the property of the Company, unless agreed in writing.

11. Licensing and no exclusivity

11.1 Any design, copywriting, drawing, idea or code created for the Client by the Company, or any of its contractors, is licensed for use by the Client on a one-time only basis and may not be modified, re-used, or re-distributed in any way or form without the express written consent of the Company and any of its relevant sub-contractors.

11.2 The Company cannot guarantee the Client exclusivity of any marketing concept, strategy, design or other intellectual property provided. Therefore the Company will not accept liability for any alleged claim from the Client or any Third Party as the result of unintentional similarity in part or

whole of a Third Party's copyright protected or registered trademark or brand, identity, strapline, colour usage, image style and content, product or otherwise. In particular, the Company subscribes to stock photography which is available for any other third party to purchase.

12. Standard media delivery

Unless otherwise specified in the Proposal these Terms and Conditions assume that any text will be provided by the Client in electronic format (ASCII text files delivered on CD or via email or FTP) and that all photographs and other graphics will be provided physically in high quality print suitable for scanning or electronically in .gif, .jpeg, .png or .ai format. The Company cannot guarantee the return of any images or printed material for use in the creation of the Services.

13. Web browsers

With respect to website design:

13.1 The Company will as far as reasonably practicable try to ensure that the website is designed to be viewed by the majority of visitors to the website. The website will be designed to operate with the most popular current web browsers such as Firefox, Safari Internet Explorer 10 and 11, Google Chrome however the Client agrees that the Company cannot guarantee correct functionality with all browser software across different operating systems.

13.2 The Company will not accept responsibility for website pages which do not display acceptably in new versions of browsers released after the Acceptance Date. The Company reserves the right to send a new proposal for any work involved in changing the website design or code to enable the website to operate with updated browser software.

14. Printing

The Company and its clients agree to comply with Printers Terms and Conditions which include disclaimers for non-completion on time and the flexibility to supply quantities within 5% of the total ordered. The Company recommends that if an exact quantity is required, then 5% extra is added to the quantity and extra time made available should the job be delayed.

15. Limitation of liability

15.1 The Company shall indemnify the Client for personal injury or death caused by the negligence of the Company's employees in connection with the performance of their duties under these terms and conditions or by defects in any Services supplied pursuant to these terms and conditions.

15.2 Save in respect of claims for death or personal injury arising from the Company's negligence, in no event will the Company be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of

any act or omission of the Company whether such damages are or were reasonably foreseeable or actually foreseen.

15.2 The Company will not be liable for any delay caused to the Client as a result of the failure or delay by the Client in complying with any of the provisions of clause 6.

15.3 The Client will not be liable for any alterations, additions, modifications and or deletions to the Services caused by a third party after the Acceptance Date.

15.4 Except as provided above in the case of personal injury or death, the Company's maximum's liability to the Client under these terms and conditions or otherwise for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the lesser of:

15.4.1 the sum for which the Company carries comprehensive insurance cover (subject to the Company actually recovering such sum from the insurer); or

15.4.2 a sum equivalent to the Price paid to the Company in respect of the Proposal which is the subject of the Client's claim plus damages limited to 15% of the same amount for any additional costs directly, reasonably and necessarily incurred by the Client in obtaining alternative services

15.5 All liability that is not expressly assumed in these terms and conditions is hereby excluded to the fullest extent allowed by law. These limitations will apply regardless of the form of action, whether under statute, tort (including negligence), or any other form of action. For the purposes of this clause "the Company" includes its employees, sub-contractors and suppliers. The Client acknowledges that the Company's employees, sub-contractors and suppliers shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in these terms and conditions shall exclude or limit liability for fraudulent misrepresentation. The Client agrees to indemnify and hold the Company harmless from any claims resulting from its use of the Company's services that damages the Client or any other party.

15.6 The Client and the Company acknowledge and agree that the limitations and exclusions of liability set out in this clause are reasonable and have been agreed taking into account the commercial value of the services to be provided and the commercial standing of each party.

15.7 No claim or action, regardless of form, arising out of these terms and conditions or a Proposal may be brought by either party more than 3 months after the cause of action has accrued

16. Assignment

16.1 The Company may assign, transfer or sub contract in whole or in part any of its rights or obligations under these terms and conditions.

16.2 The Client shall not assign, transfer or sub-contract in whole or in part of any of its rights or obligations under these terms and conditions without the prior written consent of the Company.

16.3 Notwithstanding the foregoing, either party may assign its rights and licences and transfer its obligations under these terms and conditions or any Proposal to any acquirer of all or of substantially all of such party's equity securities, assets or business relating to the subject matter of

these terms and conditions. Any attempted assignment or transfer in violation of this clause 14 will be void and without effect.

17. Termination

17.1 These terms and conditions are subject to the rights of termination arising in any other clause of these terms and conditions. Such termination will not however affect the applicability of the terms of these terms and conditions to any Proposal for which the Services called for by that Proposal have not yet been delivered and which have not themselves been terminated pursuant to any such clauses.

17.2 The Company may terminate these terms and conditions by giving the other party 30 days' prior notice of such termination.

17.3 Either party shall be entitled to terminate these terms and conditions without liability to the other party by giving notice to the other party at any time if:

17.3.1 that other party commits a breach of any of the terms of these terms and conditions, and if the breach is capable of remedy, fails to remedy the breach within 30 days after receipt of notice in writing to do so; or

17.3.2 that the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation otherwise than for the purpose of amalgamation or reconstruction; or

17.3.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of that other party; or

17.3.4 that other party ceases or threatens to cease to carry on business; or

17.3.5 the Client or the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the other party and notifies the other party accordingly.

17.4 Termination of these terms and conditions shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuation in force of any provision of these terms and conditions which expressly or by implication is intended to come into or continue in force on or after such termination.

17.5 In the event of a breach of these Terms and Conditions by the Client, the Client will pay the Company for the work already performed.

18. Confidentiality

18.1 All information of a technical or business nature (including but not limited to Proposals) disclosed by one party to the other either before or after the date of any Proposal in connection with any Services or business dealings between the parties shall be regarded as confidential ("Confidential Information") and shall only be disclosed as is strictly necessary and each party shall

procure that its personnel and third parties to which Confidential Information is disclosed treat such information as confidential:

18.1.1 to its sub-contractors for the provision of the Services provided that such disclosure is on a “need to know” basis only and the sub-contractor undertakes to keep such Confidential Information confidential; or

18.1.2 as required to be disclosed to any governmental and/or regulatory authority; or

18.1.3 to any Client Group Company or Company Group Company provided that such disclosures are on a “need to know” basis only and the applicable Group Company undertakes to keep such Confidential Information confidential.

18.2 Information shall not be deemed to be Confidential Information where it:

18.2.1 is authorised to be disclosed by the disclosing party to the extent of the authority given;
or

18.2.2 is made public by the disclosing party or is or becomes part of the public domain other than by the default of the receiving party; or

18.2.3 is in the possession of or is known by the receiving party without any obligation to keep it confidential prior to its receipt from the disclosing party; or

18.2.4 is subsequently rightfully obtained by the receiving party from a third party; or

18.2.5 is independently developed by the receiving party.

18.3 The provisions of this clause shall survive termination of these terms and conditions.

18.4 Any Confidential Information referred to in clause 18.1 shall remain the property of the disclosing party and shall be returned by the receiving party to the disclosing party if so requested.

18.5 The obligations of confidentiality set out above shall be deemed to be discharged provided that there is no intentional disclosure of the Confidential Information,

18.6 If the parties have signed a Non Disclosure Agreement then the provisions of that Non Disclosure Agreement shall take precedence over the terms of this clause 18.

19. Interpretation

In these terms and conditions unless the context otherwise requires:

19.1 words incorporating any gender include every gender;

19.2 words importing the singular number include the plural number and vice versa;

19.3 words importing persons include firms, companies and corporations and vice versa;

19.4 references to numbered clauses and annexes are references to the relevant clause in or annex to these terms and conditions;

19.5 reference in any annex to these terms and conditions to numbered paragraphs or clauses relate to the numbered paragraphs or clauses of that annex;

19.6 the headings to the clauses, annexes and paragraphs of these terms and conditions;

19.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

19.8 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

19.9 any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

20. Nature of the relationship

These terms and conditions (including any Proposal) shall not constitute or imply any partnership, joint venture, agency, fiduciary or other relationship between the parties other than the contractual relationship expressly provided for in these terms and conditions.

21. Amendments

These terms and conditions (including any Proposal) may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except in accordance with the procedure referred to in clause 7.

22. Severance

If any provisions of these terms and conditions is or becomes prohibited by law or is judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these terms and conditions and rendered ineffective as far as possible without modifying the remaining provisions of these terms and conditions, and shall not in any way affect any other circumstances of or the validity or enforcement of the remainder of these terms and conditions.

23. Waiver

Unless a party expressly waives its rights in writing, no delay, neglect or forbearance by either party in enforcing against the other party any term or condition shall either be or be deemed to be a waiver or in any way prejudice any right of that party under these terms and conditions. No right, power or remedy in these terms and conditions conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

24. Notices

24.1 All notices under these terms and conditions shall be in writing and must be in English.

24.2 Notices shall be deemed to have been duly given:

- 24.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 24.2.2 when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated; or
- 24.2.3 on the fifth business day of the sender following mailing, if mailed by national ordinary mail, postage prepaid; or
- 24.2.4 on the tenth business day of the sender following mailing, if mailed by airmail, postage prepaid, in each case addressed to the most recent address, email address, or facsimile number notified to the other.

25. Successors and assignees

25.1 These terms and conditions shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assignees and references to a party in these terms and conditions shall include its successors and permitted assignees.

25.2 In these terms and conditions references to a party include references to a person:

- 25.2.1 who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under these terms and conditions (or any interest in those rights); or
- 25.2.2. who, as administrator, liquidator or otherwise, is entitled to exercise those rights; and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party.

26. Set off

Where the Company has incurred any liability to the other party, whether under these terms and conditions or otherwise, and whether such liability is liquidated or unliquidated, the Company may set off the amount of such liability against any sum that would otherwise be due to the Company under these terms and conditions.

27. Third parties

The parties confirm their intent not to confer any rights on any third parties by virtue of these terms and conditions and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to these terms and conditions. The parties do not require the consent of any third party to terminate, rescind or to agree any variation, waiver or settlement in relation to it.

28. Force majeure

28.1 Neither party shall have any liability under or be deemed to be in breach of these terms and conditions for any delays or failure in performance of these terms and conditions which result from circumstances beyond the reasonable control of that party.

28.2 If such circumstances continue for a continuous period of more than 60 days the non-affected party may terminate these terms and conditions by written notice to the other party and in such event neither party shall have any further obligations under these terms and conditions save that the Client shall immediately pay the Company all amounts due to the Company up until the date of such termination.

29. Proper law and jurisdiction

29.1 The parties agree that the place of performance of these terms and conditions is Northern Ireland. The validity, construction and performance of these Terms and Conditions shall be governed by Northern Irish law and shall be subject to the exclusive jurisdiction of the Northern Irish courts to which the Parties submit notwithstanding the conflict of law provisions and other mandatory legal provisions save that the Company shall have the right to sue to recover its fees in any jurisdiction in which the Client is operating or has assets.

29.2 Where there is a dispute the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A representative from senior management of each party (“representatives”) shall meet in person or communicate by telephone within 5 Working Days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by each party. The representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on corrective action, then the chief executives of each party shall meet in person or communicate by telephone, to facilitate an agreement within 5 working days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further 5 Working Days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below.

29.3 If the parties cannot resolve the dispute by the procedure set out above, the parties shall irrevocably submit to the exclusive jurisdiction of the Courts of Northern Ireland for the purposes of hearing and determining any dispute arising out of these terms and conditions.

29.4 While the dispute resolution procedure above is in progress and either party has an obligation to make a payment to the other party, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the name of the relevant party at a clearing bank and such payment shall be a good discharge of that party's payment obligations under these terms and conditions. Following resolution of the dispute, whether by the above procedure or legal proceedings, the sum held in such account shall be payable as determined in accordance with the above procedure or legal proceedings and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

