

THINKING JUICE LIMITED

General Terms And Conditions Of Business

Last Updated: 29 May 2012

Nothing in these Terms and Conditions or in the Agreement shall affect any statutory rights that you may have as a consumer or operate to exclude or limit any terms that cannot lawfully be so excluded or limited.

1.0 Definitions

1.1.1 In this Agreement the following words and expressions shall have the following meanings:

1.1.1 “**Agreement**” means these Terms and Conditions, together with any applicable Schedule and/or Order Form;

1.1.2 “**Completion**” means completion of the Project;

1.1.3 “**the Customer**” means the company or person completing a signed Order Form for Services;

1.1.4 “**Customer Website**” means the intranet, extranet, website, designs or flash game, if any to be designed, modified or otherwise worked on by the Supplier as part of the Services;

1.1.5 “**Downtime**” means any service interruption in the availability to visitors of the Customer Website;

1.1.6 “**Fees**” means any fees payable for Services or elements of the Services; if not specified in the Price then in addition to the Price;

1.1.7 “**Functional Specification**” or “**Technical Specification**” or “**Specification**” means the document detailing the functionality to be delivered as part of the Project;

1.1.8 “**Intellectual Property Rights**” means patents, trade marks, design rights, applications for any of the foregoing, copyright, topography rights, database rights, rights in know-how, trade or business names and other similar rights or obligations, whether registerable or not in any country;

1.1.9 “**IP address**” stands for internet protocol address which is the numeric address for the Server;

1.1.10 “**ISP**” stands for internet service provider;

1.1.11 “**Logos**” or “**Artwork**” means any logos, artwork or other material to be provided by the Supplier to the Customer as part of any brand identity Services/as set out in the Order Form or Schedules;

1.1.12 “**Milestone**” means any milestone identified in the Timetable;

1.1.13 “**Order Form**” means the Supplier’s Order Form outlining the Services and Price;

1.1.14 “**Party**” means a party to this Agreement;

1.1.15 “**Price**” means the Price specified for the Services in the Order Form and subject to amendment in accordance with this Agreement;

1.1.16 “**the Project**” means all work carried out to meet the Proposal and Technical Specification;

1.1.17 “**Project Manager**” means the Supplier’s project manager if any from time to time nominated by the Supplier for liaison with the Customer regarding the final specifications and/or for any other Project Manager role including the keeping of any notes/records regarding delivery against Timetable/Milestones;

1.1.18 “**Proposal**” means the outline detail/specification for any Services provided or to be provided to the Customer by the Supplier and from which the Technical Specification will be agreed and drafted;

1.1.19 “**Schedule**” means a Schedule to this Agreement;

1.1.20 “**Server**” means the computer server equipment operated by the Supplier or it’s authorised third parties, in connection with the provision of the Services;

- 1.1.21 “**the Services**” means web design, development, search engine optimisation, email marketing, web hosting, email and/or any other services or facilities agreed to be provided by the Supplier as identified and outlined in the Order Form and as detailed in the relevant Schedule to this Agreement;
- 1.1.22 “**Spam**” or “**Spamming**” means sending unsolicited emails;
- 1.1.23 “**the Supplier**” means Thinking Juice Advertising Ltd, Company Number 5419447 of Thinking Juice, Avalon, 26 - 32 Oxford Road, Bournemouth, Dorset, BH8 8EZ
- 1.1.24 “**Timetable**” means the written timetable (if any) to be finally agreed between the parties after commencement of the Project and in relation to the delivery of Services and the Project generally;
- 1.1.25 “**URL**” stands for universal resource locator;
- 1.1.26 “**Virus**” means a computer programme that copies itself or is copied to other storage media, including without limitation magnetic tape cassettes, memory chips, electronic cartridges, optical discs and magnetic discs, and destroys, alters or corrupts data, causes damage to the user’s files or creates a nuisance or annoyance to the user and includes without limitation computer programs commonly referred to as “worms” or “trojan horses”;
- 1.1.27 “**visitor**” means a third party who has accessed the Website; and
- 1.1.28 “**the Website**” means if different to the Customer Website any URL used by the Customer for the purpose of the Project.
- 1.1.29 “**Web Browser**” means the software running on the computer allowing the user to view web pages, e.g. Internet Explorer, Firefox, Safari, Chrome, etc
- 1.2 The Order Form and Schedules form part of the operative provisions of this Agreement and references to this Agreement shall, unless the context otherwise requires, include references to the Schedules.
- 1.3 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.4 The headings of the paragraphs of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.
- 1.5 In the event of any inconsistency between the various provisions of the Agreement the order of priority shall be that firstly the terms of these Terms and Conditions shall prevail, secondly the terms of the Order Form and thirdly the terms of any relevant Schedule. In the event that more than one Schedule is applicable and there is a conflict between the provisions of the applicable Schedules; the terms in the Schedule that applies to the largest element of the Project (by reference to Fees, Price and other charges) shall prevail.

2.0 Introduction

- 2.1 The Supplier is engaged in business as a website designer and developer, online marketer, and provides web hosting and other services, and has agreed to supply the Services on the following terms and conditions.
- 2.2 Formation of Agreement: The Agreement shall be concluded when the Order Form is signed by the Customer and dated.
- 2.3 Save in respect of the Proposal no information or documentation provided by the Supplier to the Customer (or otherwise available) prior to conclusion of the Agreement shall constitute any representation or warranty as to the Services or otherwise.
- 2.4 The Supplier shall be entitled to update these Terms and Conditions from time to time and may publish latest versions of these Terms & Conditions at <http://www.thinkingjuice.co.uk/terms>. Any such update will apply to any further agreement or Services and, if agreed in writing by the Parties.

3.0 Duties Of Supplier

- 3.1 In consideration for the payment by the Customer of the Price and Fees and subject to the terms and conditions of this Agreement, the Supplier agrees to provide to the Customer the Services.
- 3.2 Time not of the essence regarding supply of Services: Subject to Clause 3.3, the Supplier undertakes to use all reasonable endeavours to work to the Timetable but time shall not be of the essence so far as delivery/provision of the Services concerned. If no time is specified for the delivery of Services then such Services shall, subject to the provisions of this Agreement, be supplied within a reasonable time.

- 3.3 Without prejudice to Clause 4 below where the Customer has engaged more than one supplier in the provision of brand identity, design and development services, the Supplier's delivery obligations for Services (including set out in Clause 3.2) shall be conditional upon the performance of third parties including as set out in the Timetable. The Supplier shall not be liable for any delay in the supply of Services due to non-performance, delay or defective performance or other actions or omissions of the Customer or of any third party (whether due to work on the Project or otherwise). Without limitation to the above if any third parties engaged by the Customer in relation to the Project (or for other work for the Customer) provide work or Services that is not compatible with or that causes a delay in the provision of the Services then:
- (a) the Supplier shall be entitled to charge the Customer for any additional work that results therefrom or for any additional costs resulting therefrom
 - (b) in the event that such non-compatibility is so severe as to materially impact on the ability of the Supplier to deliver the Services the Supplier shall be entitled, on written notice to the Customer and without prejudice to any other rights that it may have, to terminate the Agreement.
- 3.4 The Supplier agrees to supply the Services to the Customer on the conditions set out herein but this document is not an offer to provide Services but merely a statement of the terms on which the Supplier would provide them.
- 3.5 **Limited Warranty and Downtime:** The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill but at all times this (and the provisions of Services generally) will be subject to Downtime caused by routine or emergency maintenance by the Supplier or occasioned by third parties. The Supplier will not be liable to the Customer or any third party for any losses whatsoever caused by such Downtime.
- 3.6 Once the Technical Specification has been drawn, any change required by the Customer may be subject to additional work/cost and will involve additional fees as agreed or, in the absence of agreement at the Supplier's standard rates;
- 4.0 **Duties of Customer**
Without prejudice to any other Customer duties or obligations under the Agreement:
- 4.1 Where applicable for relevant Services the Customer shall deliver to the Supplier all drafts, concepts, text, graphics, logos, photographs, images, moving images, sound, illustrations and other materials in order for the Supplier to supply the Services in the agreed format. Unless agreed otherwise in writing the Supplier shall not be responsible for checking, connecting or updating any such content and this shall be the responsibility of the Customer.
- 4.2 Where the Customer has engaged more than one supplier in the provision of brand identity, design and/or development services, the Customer shall so far as is reasonably required by the Supplier for it to carry out the Services in accordance with the Timetable, deliver the relevant brand identity or design details to the Supplier by the date set out in the Timetable or, if no date is set, on request.
- 4.3 The Customer shall pay all Deposits, the Price, any Fees and other sums when due.
- 4.4 The Customer shall adhere to Milestones and to the Timetable. The Customer may be liable for losses or additional charges in the event that it is in breach of this provision and such breach causes a delay or loss to the Supplier.
- 4.5 It is the responsibility of the Customer, in relation to any Services, to specify any particular requirements that it has in respect of those Services; for example and, without limitation to the above: In the provision of any Search Engine Optimisation Services it is the responsibility of the Customer to specify any Keywords which it requires to be used.
- 4.6 The Customer shall comply with all applicable legislation in relation to its use of the Customer Website and any other Website, its processing of any personal data, its email marketing or other business that relates to the Project.
- 4.7 Notify the Supplier of any changes to the Customer's contact details
- 4.8 The Customer acknowledges that the Supplier may engage in work with other companies within the same sector as the Customer. If the Customer requires exclusivity within their Sector they may request this from the Supplier in writing. No guarantee is made that this request will be granted, and if an offer of exclusivity is made by the Supplier a charge may be levied.
- 4.9 The Customer shall ensure that the computer and Web Browser used for testing the Supplier's Services has the latest security updates and patches installed and acknowledges that if this is not the case, any errors the Customer reports to the Supplier regarding the Supplier's Services may not be investigated or fixed.
- 5.0 **Project Management**
- 5.1 The Supplier may nominate a Project Manager who shall be available to respond to the Customer's enquiries and who shall manage the Project upon the terms of this clause. The Project Manager (if any) shall act promptly at all relevant times during the term of this Agreement and in particular shall contribute as many hours or days of work as required from time to time for the needs of the Project in accordance with the Timetable.

- 5.2 The Customer shall nominate its Project Co-ordinator who shall at the Customer's request be available to co-ordinate with the Project Manager and who shall at the Customer's request provide all information and documentation required by the Supplier for the proper performance of the Project.
- 5.3 The Parties shall ensure that any Project Manager and the Project Co-ordinator review the progress of the Project as scheduled in any Timetable/Milestones or as otherwise agreed.
- 5.4 If the Project Manager or the Project Co-ordinator is prevented by illness or injury from performing his duties under this Agreement, the Supplier in the case of the Project Manager or the Customer in the case of the Project Co-ordinator (as the case may be) shall report the fact and its expected duration to the other Party. If the Project Co-ordinator's absence through illness or injury is materially impacting on the Project/delivery of Services, the Customer shall promptly make available an alternative suitably qualified and experienced Project Co-ordinator. The Supplier reserves the right to substitute at any time a new Project Manager on giving 3 days prior written notice to the Customer.
- 5.5 The Supplier shall be entitled to procure the services of any other persons with suitable skills and experience as are necessary from time to time in order to complete the Project in accordance with the Timetable.
- 5.6 Project Management/Time Allocation: In agreeing the Price and Fees the Supplier estimates and/or allocates certain estimated time for Project Management and this is based on the Supplier's method of work and experience – in the event that the Customer wishes to work or progress the Project differently (eg. by having more than anticipated telephone or other correspondence) then the Supplier reserves the right to set a limit to its Project Management time and to charge additional fees if this limit is exceeded.

6 Alterations to Specification

- 6.1 The Customer may, subject to the following provisions, at any time request alterations to the Specification by prior notice in writing to the Supplier.
- 6.2 On receipt of the request for alteration the Supplier shall, within 5 working days or such other period as may be agreed between the Parties, advise the Customer by notice in writing of:
- (a) whether or not it accepts the proposed alteration; and of any conditions of such acceptance and, if it is prepared to accept such alterations, and, if it may be prepared to accept such alterations,
 - (b) the likely or known material effect of the alteration, if any, on the Price, the Timetable and any other terms already agreed between the Parties. Any increase in the Price shall unless otherwise specified by the Supplier be in accordance with the then current charge rates of the Supplier for labour or other rate/s notified to the Customer. For the avoidance of doubt, the Customer's requirement that the Supplier carry out amendments or modifications or corrective or remedial work pursuant to Clause 7 (Testing) shall not constitute an alteration within the meaning of this Clause.
- 6.3 Where the Supplier gives written notice to the Customer agreeing to perform an alteration on terms different to those already agreed between the Parties, the Customer shall, within 3 working days of receipt of such notice, advise the Supplier by notice in writing whether or not he wishes the alteration to proceed.
- 6.4 Where the Supplier gives written notice to the Customer agreeing to perform an alteration on terms different to those already agreed between the Parties, and the Customer confirms in writing that he wishes the alteration to proceed on those terms, this Agreement shall be deemed automatically to have been amended so as to include the alteration and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

7.0 Functionality Testing, Modifications And Completion

- 7.1 In respect of any Project that includes design or development work, the Supplier shall, in anticipation of Completion (and once the Customer Website has been provisionally tested by the Project Manager and is ready for testing by the Project Coordinator), provide the Customer with temporary URL where the Customer Website can be viewed and tested or with other appropriate dummy or mock items with a view to these being tested for functionality (ie. against Functional Specification only). The Project Co-ordinator shall thereafter, as soon as reasonably practicable, test the items and then, together with the Project Manager, verify and certify or otherwise that the Project has, for functionality purposes (ie. against the Functional Specification), been completed. Once it is agreed and certified in writing that the Project has, according to the said Functional Specification, been completed, then the Project shall, subject only to any allowable and scheduled final design/layout changes be Completed. If the parties consider that the Project has failed in functionality (ie. to perform in accordance with the Functional Specification) and/or that amendments or modifications or corrective or Customer remedial work is required, they shall each, make reasonable attempts to agree the course of action to be adopted, using if necessary the escalation and dispute resolution procedure herein. Following any changes the Customer shall test the Customer Website again on the same terms as above. For the avoidance of doubt, the Supplier shall not undertake any changes free of charge where they require the Customer Website to operate or be designed in a manner not provided for by the Functional Specification.

- 7.2 Where the Project is deemed by the Parties to have failed as a result of an error or action by the Customer, the Supplier shall be entitled to charge for the costs of investigation and of making the changes that are necessary and agreed at the Supplier's then current price list.
- 7.3 Any graphic, design, artistic or other amendments to the Project or Services that are not within the Functional Specification shall be subject to the provisions relating to limits for amendment work etc or; in the absence of limits being specified shall be subject to a limit of 10 hours of such finalisation work.
- 7.4 Upon successful Completion:
- 7.4.1 the Customer shall be required to sign the Supplier's formal acceptance form, confirming that the Supplier has successfully completed the Project under the terms of this Agreement; and
- 7.4.2 the Supplier shall deliver to the Customer a final invoice.
- 7.5 In delivery of the Services during the Project the Customer may from time to time approve and/or "sign off" various details, designs etc on the basis of general Project design (for example not every page of a mock website will be "signed off") and, in such cases the Supplier reserves the right to supply the Services within the general design/other parameters or within then industry standards allowing for the Supplier to use its reasonable discretion and allowing for reasonable further amendments/modifications due to technical reasons.
- 7.6 Limited Warranty from Completion: Save in respect of any Services that are to be provided after Completion (eg. Hosting Services) the Supplier shall only be liable in respect of any breach of any warranty or provision of this Agreement if the Customer notifies the Supplier in writing within 1 month from Completion of such breach and specifies in reasonable detail the breach.
- 7.7 Post-Completion Work/Services: Unless otherwise agreed in writing between the Parties no services will, save for any Hosting Services agreed, be provided by the Seller after Completion. Any work or services provided by the Supplier to the Customer in addition to those detailed in the Proposal or Functional Specification shall be subject to further fees and/or charges by the Supplier and will, unless agreed otherwise, be subject to these Terms and Conditions.
- 8.0 Price and Payment**
- 8.1 Deposit: Any deposit will be specified in the Order Form or other written communication to the Customer from the Supplier. The deposit shall be payable by the Customer before commencement by the Supplier. The Supplier shall not be obliged to commence any work or Services until it has received, in full, the relevant deposit. All deposits shall be non-refundable.
- 8.2 In the event of the Customer not being accepted for cover under the Supplier's Credit Insurance Policy the Customer will be required to make payments ("a deposit") in advance of any work or Services being provided.
- 8.3 The Price and Fees are, unless stated otherwise exclusive of VAT and are exclusive of any telecommunications or other charges (including any banking or payments charges). VAT is applicable at the prevailing rate, and the Price and fees shall not be subject to any adjustment or increase except as agreed in accordance with Clause 6, where the Supplier is entitled to charge additional fees or otherwise by the Parties in writing.
- 8.4 The Customer shall make payment to the Supplier within 30 days of receipt of an invoice from the Supplier, unless different terms have been notified to the Customer. All payments to be made in pounds sterling and in the manner specified in the Invoice. Payment by the Customer of any sum under this Agreement shall be without prejudice to any claims or rights the Customer may have against the Supplier and shall not constitute any admission by the Customer as to the performance by the Supplier of his obligations under this Agreement.
- 8.5 The Supplier shall be entitled to charge interest in respect of late payment of any sum due under this Agreement, which shall accrue from the date when payment becomes due from day to day until the date of payment at an annual rate of 8%, or 2% above the published base rate of Royal Bank of Scotland whichever is the greater.
- 8.6 Fee Rates/Charge Out Rates: The Supplier shall, in respect of any Services the performance of which has not (at the relevant time) commenced, be entitled to vary its time-based fees/charge out rates on prior written notice to the Customer. The Supplier reserves the right to alter the Supplier's price list (for standard fee rates etc) at any time, but such alteration shall only take effect 1 month after notice has been given to the Customer.
- 8.7 Charges for work or services that are in addition to the Services/Project fees/charges: The Supplier reserves the right to charge fees for any work or services that it agrees to provide to the Customer in addition to the Services or the Project – such fees may include time reasonably spent by the Project Manager and the recovery of any additional costs to the Supplier. Such work and services shall be subject to these Terms and Conditions.

- 8.8 Upon termination of this Agreement, howsoever arising, the Customer shall be liable for all accrued Fees and any element of the Price and any other amounts owing at that time.
- 8.9 Remedies for non payment of fees or charges: Notwithstanding any other provision in this Agreement, in the event that the Customer does not, after written demand from the Supplier, pay any outstanding fees or charges or other amounts due the Supplier reserves the right (without prejudice to any other right or remedy that it may have) to terminate all Services, cease any work and/or close down the Customer Website.
- 9.0 Intellectual Property Rights and Confidentiality and Further Customer Obligations**
- 9.1 The Customer grants to the Supplier for the duration of the Project a royalty-free, world-wide, non-exclusive licence to use (for the purposes of the Project only) the content supplied by the Customer. The Customer warrants that such content does not infringe the Intellectual Property Rights of any third party. Unless Logos or Artwork have been specifically created by the Supplier no warranty is given by the Supplier that any Logos or Artwork will not, when used by the Customer infringe any rights of any third parties – the Customer shall ensure that any use by it of Logos or Artwork shall not infringe any third party rights and the Customer shall indemnify the Supplier in the event of any loss caused due to a breach of this provision.
- 9.2 Save in respect of any open source code, software or items owned by third parties copyright to the assembled work produced by the Supplier is owned by the Supplier. Upon final payment of the Price and all Fees the Supplier shall (subject to any third party rights identified in the Agreement or otherwise by the Parties or notified in writing to the Customer) grant to the Customer a royalty-free, world-wide, non-exclusive licence to use the Customer Website design, the web pages on the Customer Website, the images and the parts of the Project content designed by the Supplier. Rights to graphics, source code and computer programs and all other Intellectual Property, know-how or goodwill are not transferred to the Customer and remain the property of the Supplier or the relevant third party owner. The Supplier and any sub-contractors retain the right to display graphics and other web design elements as examples of their work.
- 9.3 Rights to Credits and Use of Work: The Customer grants to the Supplier the royalty free, worldwide right to:
- 9.3.1 be credited on the Customer Website as having designed the Customer Website and having provided the Services;
- 9.3.2 be credited on any mail-shot or other communication or document emanating from the Services as having supplied the relevant Services.
- 9.4 The Customer warrants and represents to the Supplier that any elements of text, graphics, photos, designs, trademarks or other material supplied to the Supplier for inclusion in the Website and Customer Website otherwise in relation to the Services are owned by the Customer, or that the Customer has permission from the rightful owner to use each of these elements and that the Supplier's use of such material shall not infringe the Intellectual Property Rights of any third party.
- 10.0 Warranties – General Exclusion**
All conditions, terms, representations and warranties that are not either expressly stated in this Agreement or imposed by statute or operation of law are hereby excluded.
- 11.0 Limitation of Liability**
- 11.1 Nothing in the Agreement shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.
- 11.2 Subject to 11.1 above the entire liability of the Supplier to the Customer in respect of any claim whatsoever in connection with or arising out of this Agreement, whether or not arising out of negligence, shall be limited to the amount paid by the Customer for the relevant Project period/Milestone or phase and for the relevant Services.
- 11.3 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.
- 12.0 Term and Termination**
- 12.1 This Agreement will continue until Completion or until terminated in accordance with its terms.
- 12.2 The Supplier shall have the right to terminate this Agreement with immediate effect by notice in writing to the Customer if the Customer fails to make any payment when it becomes due to fails to provide suitable access as set out herein.
- 12.3 Either Party may terminate this Agreement forthwith by notice in writing to the other if:
- 12.3.1 the other Party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or

- 12.3.2 the other Party commits a material breach of this Agreement which cannot be remedied under any circumstances; or
- 12.3.3 the other Party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or
- 12.3.4 the other Party ceases to carry on its business or substantially the whole of its business; or
- 12.3.5 the other Party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- 12.4 Any rights to terminate this Agreement shall be without prejudice to any other accrued rights and liabilities of the Parties arising in any way out of this Agreement as at the date of termination.
- 12.5 On termination or expiry of this Agreement howsoever arising
- (a) any property, equipment or materials supplied by the Supplier and belonging to the Supplier (or licensed by it from third parties and not being part of the items specifically delivered to the Customer under the Project) shall be promptly returned to the Supplier
 - (b) all outstanding Fees shall, together with any additional charges, taxes etc be paid in full without deduction or set off
 - (c) the Customer shall be responsible for any renewals of any registrations, for funding new hosts for any domain names and for maintenance of any of its other rights or registrations or property.
- 12.6 Termination on Notice: Either Party may terminate the provision of Services on the following terms:
- 12.6.1 In respect of all Services not subject to a minimum term: either Party may terminate the provision of such Services or any of such Services by giving written notice to the other; such notice to be given at least one clear calendar month prior to termination of the relevant Services and charges or fees shall, in that case, continue to apply for the period up to the end of the month following such notice. In the event that the provision of part only of the Services is terminated this Agreement shall remain in full force and effect so far as the provision of the remaining Services is concerned.
- 12.6.2 In respect of Hosting Services: These Services shall be indefinite recurring and ongoing unless and until either Party provides the other Party with written notice to terminate such Services; the Customer shall provide such notice at least one month prior to the renewal date. No refund will be given to the Customer in the event that it cancels such Services part-way through a hosting period.
- 12.6.3 In respect of all Services subject to a Minimum Term as denoted on the Order Form: if the Customer decides to terminate the Services prior to the end of the Minimum Term, the Customer shall be liable for any fees for those Services until the end of the Minimum Term, as if they were provided.
- 13.0 **Force Majeure**
Without limitation to Clause 3.3 neither Party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any ISP, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, (any of the above being an event of "Force Majeure") the effected Party shall in the event of Force Majeure be entitled to a reasonable extension of time within which to perform its obligations after notifying the other Party of the nature and extent of such events. If any event of Force Majeure continues for more than 30 days the effected Party may immediately terminate this Agreement by written notice to the other.
- 14.0 **Assignment**
Neither Party shall be entitled to assign or otherwise transfer this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.
- 15.0 **Severance**
If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

16.0 Notices

Any notice to be given by either Party to the other may be sent by either email, fax or recorded delivery to the address of the other Party as appearing in this Agreement or such other address as such Party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served 2 days following the date of posting. In the event that the Customer wishes to or is obliged to notify the Supplier of anything that may be time critical in relation to the Project it shall verify as soon as possible by at least two separate alternate means that its notification/communication has actually been received and read by the Supplier and notification shall only be deemed to have been given on such verification.

17.0 Entire Agreement

This Agreement together with any Schedules final agreed specifications contains the entire Agreement between the Parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both Parties.

18.0 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the law of England and the Parties hereby submit to the exclusive jurisdiction of the English courts.

19.0 Dispute Resolution and Escalation Procedure

Subject to the exclusions set out below, in the event of any dispute arising between the Parties under this Agreement the Parties shall, having initially tried in good faith to promptly resolve such dispute proceed in accordance with the following provisions of this Clause 19:

19.1 The Parties shall taking into account the rights of any third party work in good faith to seek a mutually acceptable resolution of such dispute, including but not limited to arranging and chairing any meetings between the Project Manager and Project Supervisor and between applicable representatives of each Party.

19.2 If the Project Manager and Project Supervisor are unable within 14 days of the matter being discussed by them to resolve the dispute, then the matter will be escalated to a director or the board of directors or Chief Executive Officer (or person of similar responsibility/position) of each Party to use all their respective reasonable endeavours to resolve the matter within a total period of 30 days.

19.3 In the event that the above escalation procedure does not resolve a dispute the Parties agree to:

- (i) in the case of a technical dispute, refer to an independent expert (an arbitrator) appointed by agreement of the Parties, failing which appointed by the President of the British Computer Society the costs of the expert shall be borne as he determines and his decision shall be final and binding;
 - (ii) in the case of a dispute that is agreed by both Parties to be non technical or not to be subject to Clause 19.3(i) then attempt to settle it by mediation in the United Kingdom, in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. The Parties will endeavour to agree a Mediator but, failing such agreement, the Mediator shall be appointed by CEDR. To initiate the mediation a party must give notice in writing ("ADR notice") to the other Party – a copy of the notice is to be sent to CEDR. The cost of the Mediator shall be borne by the Parties equally unless he determines otherwise and the decision of the Mediator shall be published in writing.
- 19.4 No Party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation (as set out above) and either the mediation has terminated or the other Party has failed to participate in the mediation provided that the right to issue proceedings is not prejudiced by a delay.

19.5 Anything admitted, said or done in connection with the above dispute resolution procedures is without prejudice to the legal rights of the Parties.

19.6 This Clause 19 is subject to the overriding right of a Party to immediately pursue Court action in the following situations:

- (i) an injunction is sought (and reasonably believed to be necessary) by one Party to protect its interests – or:
- (ii) the Supplier has delivered an invoice to the Customer which has remained unpaid for the agreed payment period, or 30 days whichever is the lesser, and the Customer has not, within that period, notified the Supplier in writing of a bona fide dispute of the bill, giving sufficient particulars of the grounds of dispute to enable the Supplier to decide whether the dispute is bona fide or not – or:
- (iii) where required by the insurer of any Party, or any third party having any right or interest in the claim.

20.0 **Access**

- 20.1 The Supplier shall be permitted to have such access to the premises and network of the Customer as maybe required by it for the performance of the Services.
- 20.2 The Customer shall be responsible for maintaining adequate security of and at its premises and in relation to its property or network.

21.0 **Third Party Rights**

Save as expressly stated otherwise herein nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999 (the "Act"). No variation to this Agreement and no supplemental or ancillary agreement to this Agreement shall create any such right unless expressly so stated by the Parties in any such agreement. This Clause does not affect any right or remedy of a third party which exists or is available apart from the Act.