

SCHEDULE 2

A.D.Developments Limited - Standard Terms and Conditions ('Conditions')

1 Definitions

In these Conditions, unless the context otherwise requires:

‘approved’	means approved in the manner set out in clause 12.2;
‘the Client’s Representative’	means the person specified as such in Schedule 1, or such other person as the Client may specify in writing from time to time as being authorised to act as the Client’s principal representative for the purposes of the Project;
‘the Client Website’	means, in so far as the same comprises part of the Project, the website to be designed, developed and installed (as may be applicable) by the Developer in accordance with the Specifications;
‘Confidential Information’	means all business, technical, financial and/or other information created or exchanged between the parties in the course of the Project or the negotiations leading up to the Contract being entered into, including the existence of the Project and the development of the Deliverables;
‘Contract’	means the Contract Form and the Schedules referred to therein (including this Schedule);
‘Contract Form’	means the first page of the Contract being that page which is signed by or on behalf of both the Developer and the Client;

‘the Content’	means all pre-existing text, graphics, logos, photographs, images, moving images, sound, illustrations and other material supplied by the Client to the Developer for inclusion in any of the Deliverables;
‘the Developer’s Representative’	means the person specified as such in Schedule 1 of the Contract or such other person as the Developer may specify in writing from time to time as being authorised to act as the Developer’s principal representative for the purpose of supervising the Project;
‘the Developer Software’	means that part of the Software that is the Developer’s pre-existing proprietary software (including all enhancements of it) including but not limited to any content management software supplied by the Developer or incorporated into the Client Website which manages the creation, modification and removal of content from the Client Website;
‘the Development Program’	means the program which appears at Schedule 4 of the Contract and which sets out the timescales for completing the various stages of the Project;
‘the Deliverables’	means the product(s) (if any) to be created by the Developer pursuant to the Project as detailed in the Specification;
‘the Effective Date’	means the date appearing at the top of the Contract Form;
‘enhancements’	means any enhancement, amendment, modification or improvement to the Software or any part of it resulting

in a function of the Software or any part of it being varied;

‘the Internet’

means the global network of computer systems, including without limitation, the World Wide Web;

‘IPR’

all vested contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration or these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created;

‘the Licence’

means (where applicable) the licence granted by the developer to the Client in accordance with clause 9.1;

‘the New Software’

means all Software (including all enhancements and corrections of it) written or developed by the Developer pursuant to or in connection with the Project, but such expression shall exclude the Developer Software;

‘the Price’

means the price payable in respect of the provision of the Services as specified in the Contract Form;

‘Project’

means the design and/or development project which is described in outline terms only in the Contract Form and in detail in the Specification;

‘the Services’

means the services to be supplied by the Developer to the Client in order to complete the Project in accordance with the Specification and the Development Program;

'Software'	means all computer or other machine readable coding, (including source or object codes) or other computer programs;
'Specification'	means the written specifications appearing at Schedule 3 of the Contract as may be amended by agreement between the parties from time to time (provided always that no amendment shall be valid unless recorded in writing);
'successful completion'	<p>means:</p> <p>(i) where the Project consists of the design and creation of the Client Website: the successful operation of the Client Website so that it performs functions substantially in accordance with and otherwise conforms to the Specification; and</p> <p>(ii) where the Project consists of other design work: completion and delivery of that design work in the manner and format specified in the Specification;</p>
'the Term'	means the period of duration of the Licence as specified in clause 9.1 of these Conditions;
'Warranty Period'	means the warranty period (if any) specified in the Specification;
a 'website'	means a site (comprising one or more pages) on the World Wide Web written in Hyper Text Markup Language or other World Wide Web compatible language;

‘the World Wide Web’ means the service provided over the Internet for the retrieval and transfer of documents using hypertext transfer protocol or any other similar or replacement system.

2 Interpretation

2.1 In these Conditions unless otherwise specified:

- 2.1.1 reference to a party is reference to a party to the Contract and includes that party’s permitted assignees and/or successors in title;
- 2.1.2 reference to the parties is reference to the parties to the Contract and their respective permitted assignees and/or successors in title;
- 2.1.3 reference to a person includes any person, individual, company, firm, corporation, government, state or agency of a state, or any undertaking whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists;
- 2.1.4 reference to a statute or statutory instrument or any of its provisions is to be construed as a reference to that statute or statutory instrument or such provision as from time to time amended or re-enacted;
- 2.1.5 words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 2.1.6 reference to ‘clauses’ are to clauses of these Conditions and references to ‘Schedules’ are to schedules to the Contract;
- 2.1.7 ‘includes’ and ‘including’ shall mean ‘including without limitation’.

2.2 The index to and the headings in these Conditions are for information only and shall be ignored when construing these Conditions.

3 Acceptance of orders

3.1 The Client agrees that these Conditions shall apply in respect of all or any Services supplied by the Developer to the Client pursuant to the Contract to the exclusion of all or any other terms or conditions that the Client may purport to apply in respect

of the Project or the Services whether contained in any order form, acceptance form or any other correspondence.

- 3.2 All quotations provided by the Developer shall be indicative only of the services to be provided and the price for providing the same. The Developer shall only be bound to provide the services specified in the quotation and at the price specified therein to the extent that such services and price are specifically incorporated into the Contract.
- 3.3 Notwithstanding that the Developer has signed the Contract the Developer retains the right to withdraw from the Contract at any time prior to actually receiving the Client's signed version of the Contract.
- 3.4 The Client acknowledges that by engaging the Developer to supply the Services, the Client has read, understood and agrees to be bound by these Conditions.

4 Principal duties of the Developer

In consideration of the payment by the Client of the Price and subject to these Conditions, the Developer shall with effect from the Effective Date and in accordance with the Development Program and the Specification, carry out and complete the Services on behalf of the Client.

5 Principal duties of Client

The Client shall:

- 5.1 deliver the Content to the Developer, where relevant in the agreed format, in sufficient time to enable the Developer to complete the Services (and in any event in accordance with any timescales specified in the Development Program) and the Client shall use reasonable efforts to ensure that the Content is correct and shall update the same when required to do so pursuant to these Conditions.
- 5.2 check the details of any invoice issued by the Developer upon receipt and shall raise any queries in relation thereto with the Developer within 7 days of receipt of such invoice.

- 5.3 ensure that its employees and other independent contractors co-operate reasonably with the Developer and its employees and sub-contractors in carrying out the Project;
- 5.4 promptly furnish the Developer with such information, documentation, authorisations and approvals as the Developer may reasonably request for the proper performance of its obligations under the Contract; and
- 5.5 ensure that the Client's Representative is available as reasonably required by the Developer in order to respond to any queries raised by the Developer and to provide approvals when required during the various stages of the Project.

6 Variations

- 6.1 The Client may at any time request variations to the Specification or the Development Program ('variation') by giving written notice of such request to the Developer provided always that in the event that the Client requests the Developer to take any action or step which the Developer considers amounts to a variation but does not give written notice of such request to the Developer then the Developer shall inform the Client of that fact and any dispute as to whether such action or step amounts to a variation shall be resolved in accordance with the provisions of clause 19.
- 6.2 Within 5 working days of receipt of a request to make a variation or such other period as may be agreed between the parties, the Developer shall indicate by notice in writing to the Client the terms upon which the Developer is prepared to perform the variation requested by the Client, including the effect of the variation on the Price and the Development Program, and the Developer's justification for his terms. It is recognised by the parties that a variation may result in either an increase or decrease in the Price, the size of which shall be as agreed by the parties.

6.3 If the Developer gives written notice to the Client agreeing to vary the Contract, these Conditions and all other agreed terms of the Contract shall continue to apply save as specifically stated in such written notice.

6.4 If the Developer gives written notice to the Client agreeing to perform the variation on terms different to those already agreed between the parties, the Client shall, within 5 working days of the date of the Developer's written notice, notify the Developer in writing whether or not he wishes the variation to proceed. The Developer expressly acknowledges that no order to proceed with any variation shall be binding upon the Client unless it is signed by the person nominated for that purpose by the Client, in which case these Conditions shall be deemed automatically to have been amended so as to include the variation requested by the Client and such terms and thereafter the Developer shall perform these Conditions upon the basis of the amended terms.

7 Price and payment

7.1 In consideration of performance of the Services by the Developer, the Client shall pay the Developer the Price according to this clause 7. Payment of the Price shall not be dependant upon the Client issuing any purchase order or similar document to the Developer and the Client's signature to the Contract shall be sufficient evidence that the Client has agreed to pay the Price and all other monies due pursuant to the Contract or these Conditions.

7.2 The Price is inclusive of all labour and materials but shall exclude:

7.2.1 VAT, which, if payable, shall be paid by the Client at the applicable rate; and

7.2.2 expenses as provided in clause 7.5.4.

7.3 Unless otherwise agreed in writing all payments to the Developer by the Client shall be made within 14 days following receipt of the Developer's invoices. All payments to be made by the Client to the Developer shall be in pounds sterling and shall be made by a cheque or postal order made payable to 'A.D.Developments

Limited' and sent to the Developer's registered office address at 64 Abbey Road, Bradwell Village, Milton Keynes, MK13 9AR.

- 7.4 Notwithstanding clause 7.3 above, the Developer reserves the right to request full or part payment in advance of the supply or all or any part of the Services to be supplied and/or a non-refundable deposit and any such request shall be specified in the Development Program.
- 7.5 The Developer shall be entitled to recover from the Client his reasonable incidental expenses for materials used during the Project and for third party goods and Services supplied to the Project, subject to the following provisions:
- 7.5.1 the Developer shall provide a monthly summary of expenses incurred by him in connection with the Project and such expenses shall be invoiced on a monthly basis with reasonable supporting documentation;
 - 7.5.2 any third party expense reasonably expected to be more than £50 in relation to any particular matter shall require the prior approval of the Client before it is incurred;
 - 7.5.3 the third party expenses to be reasonably incurred by the Developer in connection with the Project shall not exceed £150 in total, and any third party expenses to be incurred by the Developer exceeding that amount shall require the prior approval of the Client;
 - 7.5.4 any expense to be incurred by the Developer as a consequence of any amendment agreed by the parties to the terms of the Project shall be agreed by the parties and for the avoidance of doubt shall be outside the scope of the provisions outlined immediately above.
- 7.6 In the event that any payments by the Client in respect of the Price remain outstanding after the due date for payment, the Developer reserves the right to withhold the Services until all such amounts are paid in full. The Developer also retains the right to decline the supply of further Services to the Client whilst any invoices remain outstanding in respect of that Client.

8 Cancellation

- 8.1 The Client may cancel an order by making a request to this effect in writing up to 5 days from the Effective Date.
- 8.2 In the event that the Client cancels an order after the period of 5 days, it shall be liable to pay for all work that has been carried out and/or all costs and expenses incurred by the Developer up to and including the date of cancellation.

9 Licence of the Developer Software

- 9.1 Where one of the Deliverables consists of the Client Website or any other Software product, then in further consideration of the Price paid by the Client to the Developer, the Developer grants to the Client a non-exclusive licence commencing on, and including, the date on which successful completion of that Deliverable occurs, to use the Developer Software and the New Software subject to the terms set out in this clause 9. The Licence shall continue indefinitely unless terminated in accordance with this clause 9 or clause 16.7 or clause 17. Unless expressly agreed otherwise, the Licence shall be in respect of the use of the Developer Software and the New Software in the United Kingdom only.
- 9.2 Where one of the Deliverables consists of the Client Website then use of the Developer Software and the New Software pursuant to the Licence shall be restricted solely for the purpose of maintaining and updating the content of the Client Website by the Client or any person acting on its behalf.
- 9.3 Save as otherwise set out in this clause 9 the Client undertakes not to translate, adapt, vary, modify, disassemble, decompile or reverse engineer any of the Developer Software or the New Software without the Developer's prior written consent.
- 9.4 In the case of any reverse analysis which is permitted by applicable law, the Client may incidentally decompile the Developer Software and the New Software only if it is essential to do so in order to achieve interoperability of the Developer Software and/or the New Software with another Software program or hardware ('Permitted

Purpose') and provided the information obtained by the Client during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party without the Developer's prior written consent and is not used to create any Software which is substantially similar to the Developer Software and/or the New Software nor used in any manner which would be restricted by copyright.

- 9.5 Notwithstanding clause 9.4, the Licensee undertakes to first consult the Developer regarding any data the Client requires in order to achieve interoperability or to deduce underlying ideas and principles so that the Developer may consider making the same available to the Client (without the Client having to rely on clause 9.4) subject to the restrictions on disclosure set out in clause 9.4.
- 9.6 The Client has no right to sub-license or to assign the benefit or burden of the Licence in whole or in part, or to allow the Developer Software or the New Software to become the subject of any charge, lien or encumbrance without the prior written consent of the Developer.
- 9.7 The Client acknowledges that it shall have no rights in or to the Developer Software or the New Software other than the right to use it in accordance with the terms of the Licence.
- 9.8 If the Client fails to pay all or any part of the Price to the Developer, the Developer may terminate the Licence at any time on written notice to the Client and the Client shall cease all activities authorised by the Licence.
- 9.9 During the Term, the Developer may at its discretion supply to the Client any further release of the Developer Software which corrects faults, adds functionality or otherwise amends or upgrades the Developer Software. Such further releases (when so supplied) shall be deemed to form part of the Developer Software and shall be governed by the terms of the Licence.

9.10 Where the Project consists of the design and creation of the Client Website the Developer shall provide the Client with a backup copy of the source code of the Client Website (and may from time to time in its discretion provide further backup copies of the source code of the Client Website). For the avoidance of doubt such backup copies will be provided in order to preserve the Content and nothing in this clause shall be construed as permitting the Client to use the Developer Software following termination of the Licence.

9.11 The Developer shall be entitled to terminate the Licence at any time in the event that the Client breaches any of the terms set out in this clause 9.

10 Intellectual Property

10.1 All IPR in the Content shall remain the property of the Client.

10.2 The Client acknowledges that all IPR in the Developer Software and the New Software, and in any designs, text, graphics, logos, photographs, still or moving images, sound, illustrations and other material and any other work created or adapted by the Developer and which are included in any Deliverable shall remain the property of the Developer unless and to the extent that any of the same form part of the Content.

10.3 The Client warrants that the Content is owned by the Client or used with the consent of the original author thereof and agrees to indemnify and at all time hereafter to keep the Developer fully and effectively indemnified in respect of all or any claims, losses, demands or other liabilities suffered by the Developer arising out of the use of the Content in connection with the Project and the inclusion of the same in any Deliverable.

10.4 The Developer retains the right to include suitable development credits or acknowledgement notices within any work that the Developer designs, creates or amends including but not limited to a development credit on the Client's website;

10.5 The Client acknowledges that the Developer may include a link to the Client's website from the Developer's own website;

10.6 The Developer retains the right to include examples of works created for the Client within a portfolio of the Developer's work and to show such examples to any client or potential clients of the Developer.

11 Warranties

11.1 Subject as otherwise provided in these Conditions, the Developer warrants to the Client as follows:

11.1.1 that all of its personnel engaged in the Project have the necessary skills, expertise and diligence to undertake such work and will conform to the professional standards generally observed in the computer industry for similar services;

11.1.2 that it is entitled to enter into the Contract and (where applicable) to grant the Licence in accordance with these Conditions;

11.1.3 that the Services will be provided substantially in accordance with the Specification;

11.1.4 that any Deliverable will operate substantially in accordance with the Specification (minor interruptions and errors excluded); and

11.1.5 that the Services will be performed in accordance with the timescales set out in the Development Program provided always that such timescales shall be extended to reflect any delay on the part of the Client to provide any information, documentation, authorisation or approval in accordance clause 5.4 or any delay caused by the referral of any matter of dispute to dispute resolution in accordance with the procedure set out in clause 19.

11.2 If the Developer receives a written notice from the Client identifying a breach of

the warranties set out in clause 11.1.3, or otherwise becomes aware of its failure to comply with the warranties set out in that clause, then the Developer shall, at its own expense, promptly remedy such breach or failure provided that the Developer shall have no liability or obligations under such warranty unless it shall have received written notice of the defect or error within the Warranty Period.

11.3 Where any Deliverable consists of the Client Website, the Developer warrants that the pages of such website will operate using all then current widely commercially available versions of web browsers, but unless specifically stated otherwise in the Specification the Developer does not warrant that it will operate with any other past or non-current widely commercially available versions of web browsers.

11.4 The Developer's liability for any breach of any of the warranties set out in clause 11.1 shall be limited in the manner set out in clause 16.

12 Approval Procedure

12.1 The Developer shall be entitled at any time during the Project (and shall at the stages specified in the Development Program) submit any item (including designs, text, layouts and descriptions of functionality) produced by the Developer for approval by the Client and subject to the Client's Representative having approved the same, the Developer shall be entitled to proceed to the next stage of the Development Program.

12.2 For the purposes of clause 12.1 the Developer shall be entitled to rely on any written form of approval (including emails) received from either the Client Representative or (where the Client is a company or partnership) from a director or a partner of that company or partnership, as conclusive evidence that the Client has approved such item for the purposes of clause 12.1.

12.3 In the event that the Client having approved (in the manner set out in this clause 12) any item which was submitted by the Developer for approval by the Client, the Client subsequently wishes to amend such item in any manner or form, then such amendment shall be dealt with under the variation procedure set out in clause 6.

13 Termination

- 13.1 The Contract shall continue until completion of the Project unless the Contract is terminated in accordance with any of the provisions of this clause 13 or any other clause of these Conditions.
- 13.2 Either party shall be entitled to terminate the Contract forthwith at any time by written notice to the other party if:
- 13.2.1 the other party commits a breach of any of the terms of the Contract 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
- 13.2.2 the other party becomes subject to an administration order; a receiver or administrative receiver or similar is appointed over, or an encumbrancer takes possession of any of the other party's property or assets; the other party enters into an arrangement or composition with its creditors, ceases or threatens to cease to carry on business, becomes insolvent, or ceases to be able to pay its debts as they fall due.
- 13.3 Forthwith upon the termination of the Contract, the Developer shall return the Content to the Client and all copies of the whole or any part thereof or, if requested by the Client, shall destroy the same and certify in writing to the Client that it has been destroyed.
- 13.4 Any termination of the Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it effect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 13.5 Termination of the Contract (howsoever occasioned) shall not automatically cause the Licence to terminate if the Licence shall have been granted (or deemed to have been granted) prior to the date of such termination. Termination of the Licence

shall only be in accordance with or as referred to in clause 9.

14 Confidentiality

- 14.1 During the Term of these Conditions, the following obligations shall apply to the party disclosing Confidential Information ('the Disclosing Party') to the other party ('the Receiving Party').
- 14.2 Subject to clause 14.3, the Receiving Party:
- 14.2.1 may not use any Confidential Information for any purpose other than the performance of its obligations under these Conditions;
 - 14.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party; and
 - 14.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information.
- 14.3 The obligations of confidence referred to in the provisions of this clause shall not apply to any confidential information that:
- 14.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain prior to its receipt by the Receiving Party;
 - 14.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;
 - 14.3.3 is required to be disclosed by any applicable law or regulation; or
 - 14.3.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the other party to these Conditions in respect of it and who imposes no obligations of confidence upon the Receiving Party.
- 14.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the

provisions of this clause in addition to any damages or other remedies to which he may be entitled.

- 14.5 The obligations of the parties under the provisions of this clause shall survive the expiry or the termination of these Conditions for whatever reason.

15 Reservations

- 15.1 The Developer reserves the right to refuse to handle any Content in respect of which it has reasonable grounds to believe:

- 15.1.1 is unlawful;
- 15.1.2 contains a hostile programme or virus or any other material designed to cause deliberate harm or damage;
- 15.1.3 constitutes obscenity, harassment, racism, violence, abuse, indecency, harmful intent, spamming, or offends public morality;
- 15.1.4 contravenes any law or regulation in the United Kingdom;
- 15.1.5 infringes the IPR or any other rights of any third party.

- 15.2 The Developer reserves the right to make such amendments to these Conditions as it may in its reasonable discretion determine as appropriate from time to time and at any time without notice to the Client provided that a copy of the current Conditions shall at all times be accessible via the Developer's website at <http://www.add-creative.co.uk/terms.pdf>

16 Liability and Available Remedies

- 16.1 The Developer's entire liability to the Client in respect of any breach of his contractual obligations, any representation, statement or tortious act or omission including negligence arising under or in connection with the performance of the Services or arising out of any breach or non-observance of the Contract shall be limited to the Price.

- 16.2 The Developer shall not be liable to the Client for any indirect or consequential loss the Client may suffer (including loss of profit and damage to reputation) even

if the loss is reasonably foreseeable or the Developer was advised of the possibility of the Client incurring it.

16.3 The Developer shall not be liable to pay any punitive damages.

16.4 In the event that the Developer is in breach of the warranty contained in clause 11.1.4 above the Client's sole remedy shall be to cancel the Contract provided always that the Client shall not be entitled to cancel the Contract unless it shall have first served a notice on the Developer requiring the Developer to complete the Project (or any particular stage of the Contract) within the further period of time (being not less than 14 days) specified in that notice and the Developer shall have failed to complete the Project (or that particular stage of the Contract) within such further period of time. In the event that the Contract is cancelled in accordance with this clause then:

16.4.1 the Client shall forthwith return all Deliverables to the Developer along with any of the Developer's Software or the New Software that it may have received; and

16.4.2 the Developer shall forthwith upon receipt of the items specified in clause 16.4.1 reimburse the Price to the Client provided always that the Developer shall not be obliged to reimburse any expenses received from the Client pursuant to clause 7.5.

16.5 In the event that any third party claims that the use by the Client of the Client Website in the manner contemplated in the Contract constitute breach the IPR of that third party or that any of the IPR contained any deliverable is owned by that third party and is not being used with his consent then the Developer shall defend at its own expense such claim ('Intellectual Property Claim') and the Developer shall pay all costs and damages awarded or agreed to in settlement of any Intellectual Property Claim provided that the Licensee:

16.5.1 furnishes the Developer with prompt written notice of the Intellectual

Property Claim concerned;

- 16.5.2 provides the Developer with reasonable assistance (at no cost to the Developer) in respect of that Intellectual Property Claim;
 - 16.5.3 gives to the Developer the sole authority to defend or settle the Intellectual Property Claim.
- 16.6 If, in the Developer's reasonable opinion, the use of Developer's Software and/or the New Software is or may become the subject of an Intellectual Property Claim or breaches any third party's IPR, then the Developer shall either:
- 16.6.1 obtain for the Client the right to continue using that part of the Developer's Software and/or the New Software which are the subject of the Intellectual Property Claim; or
 - 16.6.2 replace or modify that part of the Developer's Software and/or the New Software which are the subject of the Intellectual Property Claim so they become non-infringing.
- 16.7 If the remedies set out in clause 16.6 above are not in the Developer's opinion reasonably available, then the Client shall immediately cease using the Developer's Software and/or the New Software (the Licence having been terminated) and the Licensor shall refund to the Licensee the corresponding portion of the Price whereupon the Contract shall be cancelled and neither party shall have any further liability to the other save for any liability arising under clause 13.4.
- 16.8 All liability that is not expressly assumed in these Conditions is hereby excluded. The limitations set out in this clause 16 will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this clause 16, the 'Developer' includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties)

Act 1999. Nothing in these Conditions shall exclude or limit liability for fraudulent misrepresentation.

17 Force majeure

17.1 Neither party shall be deemed to be in breach of these Conditions or otherwise liable to the other party for any delay in performance or any non-performance of any obligations under these Conditions (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to an event or circumstance beyond the reasonable control of that party ('an event of force majeure').

17.2 The party relying on the clause 17.1 shall promptly notify the other party of the nature and extent of the circumstances giving rise to the event of force majeure.

17.3 If the event of force majeure in question prevails for a continuous period in excess of three months after the date on which it began, the other party may give notice to the party terminating these Conditions. The notice to terminate must specify the termination date, which must be not less than 30 days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, these Conditions will terminate on the termination date set out in the notice. Neither party shall have any liability to the other in respect of termination of these Conditions due to an event of force majeure, but rights and liabilities which have accrued prior to termination shall not be affected.

18 Disclaimer

18.1 Whilst the Developer shall exercise reasonable skill and care in the supply of Services, it cannot guarantee the absence of faults and/or errors in website codes and web pages. In the event that an error arises which prevents the code from matching the original specification from the Client, the Client acknowledges agrees that the Developer may apply an alternative solution as close as possible to that specification.

- 18.2 In the event that the Client makes any amendments to the Developer's website codes, the Client shall remain solely responsible for any subsequent errors that may arise in respect of such codes. If such errors lead to functionality errors of the website, the Developer reserves the right to charge for the work required to correct the functionality errors.
- 18.3 The Developer cannot guarantee that any websites it creates or develops will become listed with any search engines.
- 18.4 The Developer does not accept responsibility for any losses which may arise during a Project as a result of hardware or software failures and the Client shall remain responsible for maintaining sufficient backups of any website and design source files during the period in which a website project is being undertaken.
- 18.5 The Developer does not guarantee that its websites function with all browser software across different operating systems.
- 18.6 The Developer does not guarantee the accuracy, completeness or reliability of any website content.

19 Dispute resolution

- 19.1 All disputes arising between the parties at any time that cannot be resolved by the Client's Representative and the Developer's Representative may in the first place be referred to the managing directors of the parties. If they are unable to resolve the dispute, it may be referred to an expert.
- 19.2 The expert must have appropriate qualifications and practical experience to resolve the particular dispute and shall be agreed by the parties or in the event of failure to agree shall be appointed by the President for the time being of the Law Society.
- 19.3 The parties shall promptly furnish to the expert all information reasonably requested by him relating to the particular dispute, imposing appropriate obligations of confidence.

- 19.4 The parties shall require the expert to use all reasonable endeavours to render his decision within 30 days following his receipt of the information requested or if this is not possible so soon thereafter as may reasonably be practicable, and the parties shall co-operate fully with the expert to achieve this objective.
- 19.5 The parties shall share the fees and expenses of the expert equally. The decision of the expert shall be final and binding upon each of the parties.
- 19.6 The dates set out in the Development Program shall be postponed by a period to be agreed between the parties or determined by the expert. For the avoidance of doubt the provisions of this clause provide for a form of advanced dispute resolution and is not a reference to arbitration.

20 Waiver

- 20.1 A waiver of any term, provision or condition of these Conditions shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which it is given.
- 20.2 No failure or delay on the part of any party in exercising any right, power or privilege under these Conditions shall operate as a waiver of it, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of it or the exercise of any other right, power or privilege.
- 20.3 No breach of any provision of these Conditions shall be waived or discharged except with the express written consent of the parties.

21 Invalidity

- 21.1 If any provision of these Conditions is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, whether or not pursuant to any judgment or otherwise:
- 21.1.1 the validity, legality and enforceability under the law of that jurisdiction of any other provision; and

21.1.2 the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision, shall not be affected or impaired in any way.

21.2 If any provision of these Conditions is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from these Conditions and shall be deemed to be deleted from these Conditions and the validity of the remaining provisions shall not be affected. If any such deletion materially affects the interpretation of these Conditions, the parties shall use their best endeavours to negotiate in good faith with a view to agreeing a substitute provision as closely as possible reflecting the commercial intention of the parties.

22 Remedies

22.1 The rights and remedies provided for by these Conditions are cumulative with and not exclusive of any rights or remedies provided by law.

22.2 Without prejudice to any other rights or remedies of the parties, each party acknowledges for the benefit of the other that damages might not be an adequate remedy for any breach of the provisions of these Conditions and that, accordingly, either party shall be entitled without proof of special damage to the remedies of injunction and specific performance and other equitable remedies for any threatened or actual breach of the provisions of these Conditions by the other.

23 Notices

23.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by these Conditions shall be in writing and shall be delivered personally or sent by fax or prepaid first class post (air mail if posted to or from a place outside the United Kingdom):

- (a) in the case of the Client to the address provided to the Developer for invoice purposes and marked for the attention of the managing director of the Client company;

- (b) in the case of the Developer to 64 Abbey Road, Bradwell Village, Milton Keynes, MK13 9AR and marked for the attention of the managing director

and shall be deemed to have been duly given or made as follows:

- 23.1.1 if personally delivered, upon delivery at the address of the relevant party,
- 23.1.2 if sent by first class post, two business days after the date of posting,
- 23.1.3 if sent by air mail, 5 working days after the date of posting, and
- 23.1.4 if sent by fax, when despatched,

provided that if, in accordance with the above provision, any notice, demand or other communication would otherwise be deemed to be given or made after 1700 hours, it shall be deemed to be given or made at the start of the next business day.

- 23.2 A party may notify the other party to these Conditions of a change to his name, relevant addressee, address or fax number for the purposes of the above clause provided that such notification shall only be effective on:

- 23.2.1 the date specified in the notification as the date on which the change is to take place; or
- 23.2.2 if no date is specified or the date specified is less than five business days after the date on which notice is given, the date falling five business days after the notice has been given.

24 Entire agreement

- 24.1 These Conditions embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of these Conditions. Neither party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in these Conditions save for any representation made fraudulently.

- 24.2 Unless otherwise expressly provided elsewhere in these Conditions, these Conditions may be varied only by a document signed by both of the parties.

25 Relationship of the parties

Nothing in these Conditions and no action taken by the parties pursuant to these Conditions shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture, the agents of each other or any other co-operative entity.

26 Governing law and jurisdiction

26.1 These Conditions, and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to these Conditions or its formation, shall be governed by and construed in accordance with the laws of England.

26.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of England for the purpose of hearing and determining any suit, action or proceedings and/or settling any disputes arising out of or in connection with these Conditions and for the purpose of enforcement of any judgment against their respective assets.

27 Third parties

Save as otherwise expressly stated in these Conditions the parties confirm their intent not to confer any rights on any third parties by virtue of these Conditions and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.