

Terms & Conditions

- 1. Definitions and Interpretation**
 - 1.1 Some of the words and phrases in these Conditions mean specific things. They are capitalised all the way through and explained in the Defined Terms section at the end of these Conditions in Appendix 1.
 - 1.2 No terms or conditions delivered with or contained in your purchase conditions, order or other document will form part of our Agreement.
 - 1.3 Each Order issued by you shall be an offer to purchase the Services from us subject to these Conditions.
 - 1.4 Your submission of an Order is an offer to us to supply the Services which we may accept or reject at our discretion. An Order shall not be accepted, and no binding obligation to supply the Services shall arise, until the earlier of:
 - 1.4.1 our written acceptance of the Order; or
 - 1.4.2 our commencement of the performance of the Services or notification to you that they are ready to be performed (as the case may be), each referred to as **Order Acceptance**.
 - 1.5 In our Agreement, unless otherwise stated:
 - 1.5.1 the headings in our Agreement are included for convenience only and shall have no effect on interpretation;
 - 1.5.2 you and us are together the **parties** and each a **party**, and a reference to a 'party' includes that party's successors and permitted assigns;
 - 1.5.3 words in the singular include the plural and vice versa;
 - 1.5.4 the words 'include', 'including' or 'for example' do not limit something to just the examples that follow;
 - 1.5.5 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);
 - 1.5.6 any reference to a specific law or regulation in these terms includes that law or regulation as amended, replaced or extended; and
 - 1.5.7 any reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
 - 1.6 In our Agreement:
 - 1.6.1 each Order entered into by you shall form a separate agreement, incorporating the Proposal, these Conditions together with the Special Conditions (if any) and, if applicable, the Privacy Policy (**our Agreement**);
 - 1.6.2 if there is a conflict between any of the documents listed below, the order of priority, highest first, is:
 - 1.6.2.1 the Special Conditions (if any);
 - 1.6.2.2 the Proposal;
 - 1.6.2.3 the Privacy Policy;
 - 1.6.2.4 the Order;
 - 1.6.2.5 the Conditions; and
 - 1.6.3 subject to the order of priority between the documents in clause 1.6.2, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.
 - 1.7 Marketing and other promotional material relating to the Services are illustrative only and do not form part of our Agreement.
- 2. What You Have To Do**
 - 2.1.1 You acknowledge that our ability to provide the Services may be dependent upon your full and timely cooperation, as well as the accuracy and completeness of any Materials you provide to us. Accordingly, you will:
 - 2.1.1.1 provide us with any Materials or other items reasonably required by us, in a timely manner, and you will make sure the same is accurate and complete;
 - 2.1.1.2 promptly complete any preparation activities that we may request to enable you to receive any Service;
 - 2.1.1.3 comply with any of your additional or special responsibilities and obligations specified in the Order or otherwise agreed between us from time to time;
 - 2.1.1.4 cooperate with us and comply with any reasonable requests we make to help us provide any Service;
 - 2.1.1.5 comply with Applicable Law and make sure your Representatives do as well;
 - 2.1.1.6 inform us in a timely manner of any matter which may affect our performance of the Services;
 - 2.1.1.7 obtain and maintain all necessary licences, permits and consents required to enable us to provide the Services to you; not use any of the Services to promote any illegal, unlawful and immoral item, product, or service or to engage in any illegal, unlawful or fraudulent business practice in the UK or any other country; and
 - 2.1.1.8 not disclose to any third party any information relating to our fees, services, recommendations and reports.
 - 2.2 Unless otherwise agreed with you in writing, we will be your exclusive supplier of the Services. You agree not to purchase, directly or indirectly, any services which are the same as or similar to the Services from any other person during the Term.
 - 2.3 Nothing in our Agreement shall restrict us from supplying any services which are the same as or similar to the Services to other customers.
 - 2.4 We rely on the fact that you are best placed to know about your business and accordingly you are responsible for understanding any Applicable Laws relating to your business and for selecting and using the Services and the Deliverables in a manner that complies with all Applicable Laws.
- 3. When We Are Not To Blame**
 - 3.1 We will not be liable if we fail to do something under our Agreement (including not carrying out any of our responsibilities, carrying them out late or not meeting any Service Levels), to the extent our failure is due to or contributed to by:
 - 3.1.1 your failure to carry out any of your responsibilities under our Agreement, or you carrying them out late, in which case you will pay us for any reasonable costs we incur as a result of your failure;
 - 3.1.2 anyone other than us or our suppliers doing something, or not doing something, they need to do;
 - 3.1.3 a Force Majeure Event; or
 - 3.1.4 restriction or prevention by Applicable Law, a court order, an application for interlocutory relief or injunction.
- 4. Contract and Change Control Management**
 - 4.1 Each of us shall appoint an Account Manager to act as the main point of contact for the other party in respect of all day-to-day matters relating to the supply of the Services and our Agreement.
 - 4.2 We both shall ensure that our respective Account Managers meet at such intervals agreed between them to discuss the progress being made in relation to the provision of the Services and any disagreements which may arise.
 - 4.3 Where you or we see a need to change our Agreement or any of the Services (whether in order to include an additional service, function or responsibility to be performed by either or us, to amend the Services or the Service Levels applicable to any Services), we may at any time request, and you may at any time recommend, such Change and a Change Request shall be submitted by the one of us requesting/recommending (as applicable) the Change to the other. Such Change shall be agreed only once the Change Request is agreed by both of us. For the avoidance of doubt, if we determine the Change has any impact on the agreed Charges, we may amend the Charges to reflect the Change.
 - 4.4 Until such Change is made in accordance with clause 4.3, both of us shall, unless otherwise agreed in writing, continue to perform our Agreement in compliance with its terms prior to such Change.
 - 4.5 Any discussions which may take place between us in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either of us.
- 5. Acceptance**
 - 5.1 Acceptance and approval of any Deliverables provided by us to you shall be deemed to have taken place upon the occurrences of any of the following events:
 - 5.1.1 you provide your verbal or written approval of the Deliverable to us;

- 5.1.2 your use of any part of the Deliverable in a live environment and/or for any revenue earning purposes or to provide any services to third parties; or
- 5.1.3 you unreasonably delay the provision of feedback requested by us in relation to a Deliverable for a period of five Business Days from the date on which we request such feedback.
- 5.2 You will notify us if any statement made by us in document submitted by us to you for approval is incorrect or misleading in any way, or is likely to give rise to any claim or action against us, whether for defamation or otherwise.
- 5.3 You agree to indemnify and keep us indemnified against any and all claims made against us (whether for loss, damage, inconvenience, delay or otherwise) and all actions, procedures, damages, costs and expenses arising directly or indirectly in connection with any press releases, publications or other material prepared for you by us which has been approved or deemed approved by you prior to publication or transmission.
- 6. Paying Us**
- 6.1 Our Charges shall be as set out on the Proposal or, if they are not set out in the Proposal, they will be calculated in accordance with our Standard Hourly Rates.
- 6.2 In addition to the Charges, we will charge you for the items set out below:
- 6.2.1 **Expenses:** expenses including couriers, media monitoring, specialist subscriptions, travel, accommodation and subsistence (**Expenses**) incurred specifically in the performance of the Services (other than Programme Costs) shall be charged to you at cost, except that a car mileage allowance shall be payable by you in accordance with the rate published by HMRC from time to time (which is currently 45p per mile)
- 6.2.2 **Programme Costs:** Costs for goods and services brought from third party suppliers on your behalf, (other than Expenses) including photography, reproduction, artwork, design, printing, advertising, market research, exhibition and display materials, press distribution and major mailings, artist/celebrity fees, evaluation, venues, legal advice and any other third party costs approved by you in advance (**Programme Costs**) shall be charged to you at cost unless otherwise specified in the Proposal.
- 6.3 If we are required to make a cost commitment or payment to a third party in excess of £1,000 in order to complete an agreed aspect of the Services, you shall be required to provide us with sufficient funds prior to the payment or commitment being made.
- 6.4 The amounts payable by you under our Agreement are exclusive of VAT. Where it applies, you will pay us VAT (at the prevailing rate when the payment is due to be made by you) on the sums payable under our Agreement. To avoid doubt, we may vary the Charges at any time to take account of any change in VAT and all other taxes during the Term and your direct debit payments will be updated accordingly.
- 6.5 Unless otherwise agreed with you, we may increase the Charges following the first Year at any time by giving you not less than 2 months' notice in writing provided that:
- 6.5.1 the number of Charges increases in any Year does not exceed one; and
- 6.5.2 the increase will be in line with the increase in the prices identified by the Consumer Price Index (as published by the UK Office for National Statistics) from the month in the previous Year when compared to the same month in the current Year when the increase will take effect.
- 7. Payment**
- 7.1 Unless otherwise agreed with you:
- 7.1.1 we will invoice you for the Charges, the Expenses and the Programme Costs in accordance with the relevant billing interval(s) identified in the Proposal for each Service and, where billing intervals are not specified in the Proposal, monthly in arrears; and
- 7.1.2 you will pay each of our invoices:
- 7.1.2.1 unless specified in the Proposal or otherwise agreed with you from time to time in writing, within 30 days of the date of our invoice; and
- 7.1.2.2 in full and in clear funds, without deduction or set-off.
- 7.2 Time of payment of sums to us is of the essence. If you do not pay any of our invoices by the due date, without limiting our other rights, we may:
- 7.2.1 charge you interest on the unpaid amount at 4 per cent a year above HSBC PLCs' base rate from time to time in force. The interest will build up and be compounded each week, from the date the invoice was due to the date you pay us; and
- 7.2.2 restrict or suspend the Services under clause 17.
- 7.3 If you do not agree with something in an invoice we send you, you will give us written notice within 7 days after the date of the invoice.
- 7.4 We will both settle an invoice dispute in accordance with clause 16 and you will pay the amount we both finally agree on

within seven days of both of us agreeing it. You will always pay the undisputed amount of an invoice on the due date for payment.

7.5 Where any services additional to the Service are required by you or where a project is varied or delayed by you, we shall be entitled to charge you additional fees at the Rates set out in the Proposal or, if no such Rates are specified, at our Standard Hourly Rate prevailing.

8. Our Warranties

- 8.1 We will:
- 8.1.1 provide the Services with reasonable skill and care and in accordance with the applicable Service Description in all material respects; and
- 8.1.2 use reasonable endeavours to meet dates for performance of the Services, but time shall not be of the essence for performance of the Services.
- 8.2 If there is a breach of the warranties in clause 8.1 we will use reasonable endeavours to remedy or reperform the impacted Services within a reasonable time.
- 8.3 We warrant that we will use reasonable endeavours to meet or exceed the Service Levels.
- 8.4 If we fail to meet or exceed a Service Level you may provide written notice of the default to us. We will then:
- 8.4.1 investigate the reason for the failure;
- 8.4.2 advise you of the status of the remedial efforts being undertaken by us with respect to the failure; and
- 8.4.3 use reasonable endeavours to take appropriate preventative measures so that the relevant Service Level failure does not reoccur.
- 8.5 To the maximum extent permitted by law, clauses 8.2 and 8.4 set out your sole and exclusive remedies (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in clause 8.1 and 8.3 respectively.
- 8.6 The warranties in clauses 8.1 and 8.3 are subject to the limitations set out in clause 15 and shall not apply to the extent that any defect in the Services or failure to meet or exceed the Service Levels arises as a result of:
- 8.6.1 incorrect use Services by you or any of your Representatives;
- 8.6.2 use of any of the Services other than for the purposes for which it is intended;
- 8.6.3 any act or omission by any third party;
- 8.6.4 any modification of the output of the Services (other than that undertaken by us or at our direction); or
- 8.6.5 any breach of our Agreement by you (or by any of your Representatives).
- 8.7 Other than as set out in this clause 8, and subject to clause 15.1, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

9. Your Warranties

- 9.1 You warrant to us that:
- 9.2 you have the full corporate right, power and authority to enter into, and to exercise your rights and perform your obligations under, our Agreement and our Agreement when executed will constitute valid, lawful and binding obligations on you, in accordance with its terms;
- 9.2.1 the Materials supplied by you to us are accurate, complete and true in all material respects;
- 9.2.2 you possess all necessary authorisations, approvals, consents, licenses, permits, certificates, permissions and other rights necessary for us to provide the Services including, without limitation, if any information supplied by you contains the name or pictorial representation (photographic or otherwise) of any living person and/or any part of any living person and/or any data by which any living person can be identified, you have obtained a licence to make use of such name, representation and/or data or are satisfied itself that no such authority is lawfully required;
- 9.2.3 the Materials supplied by you are legal, decent, honest and truthful and comply with all Applicable Law; and
- 9.2.4 no Materials to be used in any Deliverables contain any data, imagine, information, text, content or other material that is: (a) offensive, obscene; pornographic, seditious or indecent; (b) defamatory, threatening, menacing, blasphemous or racially, ethnically or otherwise objectionable; (c) designed or likely to cause annoyance, inconvenience, unwanted attention or needless anxiety to any other person; (d) the Intellectual Property Rights or other rights of any third party; (e) designed or likely to cause disruption to any computer system or to any network; (f) designed or likely to incite acts of terrorism; or (g) illegal or designed or likely to induce an illegal act.
- 9.2.5 You agree to indemnify and keep us indemnified against any and all claims made against us (whether for personal injury, loss, damage, inconvenience, delay or otherwise) and all actions, procedures, damages, costs and expenses arising

directly or indirectly from your breach of any warranty in clause 9.1.

10. Third Party Products and Services

10.1 You acknowledge that we may not own certain rights used by us in the course of performing the Services or in the Deliverables (**Third Party Materials**) or may subcontract certain aspects of the Services to third parties (**Third Party Services**). Your use of such Third Party Materials and Third Party Services may be subject and conditional on terms from the relevant third party (**Third Party Terms**).

10.2 You shall at all times comply with the Third Party Terms and shall indemnify and keep us indemnified against any and all claims made against us (whether for loss, damage, inconvenience, delay or otherwise) and all actions, procedures, damages, costs and expenses arising directly or indirectly from any breach by you of any Third Party Terms.

10.3 To the fullest extent permitted by law, our liability to you in connection with the Third Party Materials and Third Party Services shall not exceed the amount we receive from the relevant third party in compensation for any default by it or otherwise for it acts or omissions arising out of or in connection with the provision of the Third party Materials and/or Third Party Services.

11. Intellectual Property

11.1 Intellectual Property Rights will carry on being their original owner's property.

11.2 You hereby grant us a non-exclusive, royalty-free, worldwide licence for the duration of our Agreement to access and use the Materials, your agreed website(s), social media accounts, social media scheduling tools and systems and your Intellectual Property Rights as necessary to perform the Services.

11.3 You shall treat any offers or proposals made by us as trade secrets. They remain our property. Such offers and proposals or the information contained within them must not be passed to a third parties or publicly disseminated without our written consent beforehand. This includes, but is not limited to, technical features, functionality, aspects of designs and pricing information.

11.4 We may include statements such as "Designed and developed by Clearsilver", together with appropriate copyright notices and other such notices on any Deliverables in a form to be agreed with you beforehand (such agreement not to be unreasonably withheld, conditioned or delayed).

12. Personal Data

12.1 We will either be a Controller, Processor or both under our Agreement depending on the type of Personal Data Processed and the purpose of the Processing. If we act as Processor, clauses 12.2 to 12.10 shall apply. If we act as a Controller, clause 12.11 shall apply.

12.2 You will at all times comply with all Data Protection Laws in connection with the processing of Protected Data. You will ensure all instructions given by you to us in respect of Protected Data shall at all times be in accordance with Data Protection Laws.

12.3 We will process Protected Data in compliance with the obligations placed on us under Data Protection Laws and the terms of our Agreement.

12.4 We will:

12.4.1 only process (and shall ensure our Personnel only process) the Protected Data in accordance with our Agreement (and not otherwise unless alternative processing instructions are agreed between us in writing) except where otherwise required by Applicable Law (and we will inform you of that legal requirement before processing, unless Applicable Law prevents us doing so on important grounds of public interest); and

12.4.2 without prejudice to clause 12.2, if we believe that any instruction received by us from you is likely to infringe the Data Protection Laws we will inform you and be entitled to cease to provide the relevant Services until we have agreed between us appropriate amended instructions which are not infringing.

12.5 In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with our Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, we will implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.

12.6 We will:

12.6.1 not permit any processing of Protected Data by any agent, sub-contractor or other third party (except our or our Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without your prior written authorisation;

12.6.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 12 that is enforceable by us and ensure each such Sub-Processor complies with all such obligations;

12.6.3 remain fully liable to you under our Agreement for all the acts and omissions of each Sub-Processor as if they were our own; and

12.6.4 ensure that all persons authorised by us or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential. We shall (at your cost):

12.7.1 assist you in ensuring compliance with your obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to us; and

12.7.2 taking into account the nature of the processing, assist you (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of your obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.

12.8 We shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the **United Kingdom** or to any International Organisation without your prior written consent.

12.9 We will, in accordance with Data Protection Laws, make available to you such information that is in our possession or control as is necessary to demonstrate our compliance with the obligations placed on us under this clause 12 and to demonstrate compliance with the obligations on each of us imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by you (or another auditor mandated by you) for this purpose (subject to a maximum of **one** audit request in any 12 month period under this clause 12.9).

12.10 At the end of the provision of the Services relating to the processing of Protected Data, at your cost and at your option, we shall either return all of the Protected Data to you or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires us to store such Protected Data.

12.11 If we act as a Controller of your Personal Data we will Process the Personal Data in accordance with Data Protection Laws and as set out in the Clearsilver Privacy Policy.

13. Keeping Things Confidential

13.1 We shall maintain the confidentiality of your Confidential Information and shall not without your written consent beforehand or in accordance with our Agreement, disclose or copy your Confidential Information other than as necessary for the performance of the Services or our express rights and/or obligations under our Agreement.

13.2 Subject to our express rights under our Agreement, we: undertake to disclose your Confidential Information only to those of our officers, employees, agents, contractors and direct and indirect sub-contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement or as otherwise reasonably necessary for the provision or receipt of any of the Services; and shall be responsible to you for any acts or omissions of any of the persons referred to in clause 13.2.1 in respect of the confidentiality and security of your Confidential Information as if they were our own.

13.3 You shall maintain the confidentiality of our Confidential Information and shall not without our written consent beforehand, disclose, copy or modify our Confidential Information (or permit others to do so) other than as necessary for the performance of your express rights and obligations under our Agreement.

13.4 You undertake to:

13.4.1 disclose our Confidential Information only to those of your officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement;

13.4.2 procure that such persons are made aware of and agree in writing to observe the obligations in this clause 13.3; and

- 13.4.3 be responsible for the acts and omissions of those third parties referred to in this clause 13.4 as if they were your own acts or omissions.
- 13.5 You shall give notice to us of any unauthorised use, disclosure, theft or loss of our Confidential Information immediately upon becoming aware of the same.
- 13.6 The provisions of this clause 13 shall not apply to the other party's information which:
 - 13.6.1 is or comes into the public domain through no fault by the other party, its officers, employees, agents or contractors;
 - 13.6.2 is lawfully received by the other party from a third party free of any obligation of confidence at the time of its disclosure;
 - 13.6.3 is independently developed by the other party (or any of its Affiliates or any person acting on our behalf), without access to or use of such information; or
 - 13.6.4 is required by law, by court or governmental or regulatory order to be disclosed.
- 13.7 This clause 13 shall survive the termination or expiry of our Agreement.

14. Service Specific Terms

PPC Management Services

- 14.1 We will provide you with the pay per click management Services set out in the Proposal (**PPC Campaign**) with a view to advertising and directing traffic to websites agreed with you in writing (**Your Website**). We may use specific key words, including, but not limited to, any key words listed in the Proposal or otherwise agreed between us in writing.
- 14.2 During a PPC Campaign, we may at any time refuse to accept or use any material, text or content which we deem at our own discretion to be illegal, offensive or controversial or where you have failed to obtain necessary third party licenses or consents.
- 14.3 For PPC Campaigns, you acknowledge and agree that:
 - 14.3.1 you shall co-operate with us and follow our recommendations in relation to the implementation of the PPC Campaign including, but not limited to, providing any additional information, content or text for your advertisements or the Your Website as we may deem necessary for the operation of the PPC Campaign;
 - 14.3.2 we shall have control over administration of any pay-per-click account created for you for the purpose of the PPC Campaign;
 - 14.3.3 you will not make any changes to your advertisements, Your Website or PPC Campaign which are contrary to or override our recommendations, without our written consent beforehand;
 - 14.3.4 we do not guarantee nor warrant that: (a) the position of any pay-per-click keyword, phrase or search agreed with you in a Search Engine for the purposes of the PPC Campaign will be available at all times; or (b) third party PPC Campaign management tools will be available at all times.

Search Engine Optimisation Services

- 14.4 We will provide you with the Search Engine positioning and optimisation services set out in the Proposal subject to variation from time to time (**SEO Campaign**) with a view to improving the search engine rankings and visibility for agreed keywords (**SEO Keywords**) and Your Website.
- 14.5 We may from time to time without notice change the scope of the SEO Campaign in order to comply with any Applicable Laws and Search Engine Policies and Procedures and algorithms provided that such changes do not materially change the scope of the SEO Campaign or related Charges.
- 14.6 You acknowledge and agree that:
 - 14.6.1 it may take several months to achieve the ranking of the Your Website in the Search Engines;
 - 14.6.2 to enable us to undertake the SEO Campaign, you shall provide us with: access to Your Website for analysis of its content and structure; permission for us to make changes to Your Website; permission for us to communicate directly with any applicable third parties connected with Your Website; control over the link building strategy for Your Website and you will not conduct any such activity without our written consent beforehand; and, if available, access to existing traffic statistics for Your Website;
 - 14.6.3 we do not guarantee: first position, first page or consistent top ten positions for any particular SEO Keyword as it is solely at the discretion of the Search Engines themselves to list a website; or the SEO Campaign will produce any specific results, including an increase in enquiries received by you or the conversion of such enquiries into revenue for you;
 - 14.6.4 we have no control over any changes made by Search Engines to the Search Engine Policies and Procedures with respect to the type of websites and/or content that they accept or the way in which websites are ranked in the future. As a result Search Engines may: stop accepting submissions from us for an indefinite period of time with or without notice; or cease to list Your Website at its discretion, and in each case, we may not be aware of such changes;
 - 14.6.5 we are not responsible for changes made to Your Website by: you or any third party, except where such changes are made at our direction; or you in choosing to link to or obtain a link

from Your Website without our prior consultation, in each case that adversely affects the Search Engine rankings of Your Website;

Social Media Management Services

- 14.7 We will provide you with the social media management services set out in the Proposal (**SMM Campaign**) through the use of various social media platforms and networks with a view to promoting your profile online.
- 14.8 We may from time to time and without notice to you change the scope of the SMM Campaign in order to comply with any Applicable Laws and Search Engine Policies and Procedures and algorithms provided that such changes do not materially change the scope of the SMM Campaign or related Charges.
 - 14.8.1 You acknowledge and agree that:
 - 14.8.1.1 you will provide us with such text, artwork, information, logos and designs, and will do so in such formats and at such time or times, as we may reasonably require in order to promote you and to undertake the SMM Campaign;
 - 14.8.1.2 we reserve the right to edit or amend any content on any social media channels that we consider to be offensive, unlawful or inappropriate, or which appear to infringe the Intellectual Property Rights or other rights of any third party;
 - 14.8.1.3 if you fail to provide us such artwork and other material in accordance with clause 14.8.1.2 or only supply material which we consider to be offensive, unlawful or inappropriate or which appear to infringe the Intellectual Property Rights or other rights of any third party, we reserve the right to, at your cost, produce material to our own design, without seeking your approval, for the remaining Term or until suitable artwork and other material is supplied, whichever is sooner; and
 - 14.8.1.4 it is not practical for us to notify you of each and every posting that we make on your behalf on any or all social media channels and you agree that we are not required to do so.

Web Services

- 14.9 Where any Services include site hosting services we do not promise that those Services shall be uninterrupted, error free or completely secure. You acknowledge and accept that there are risks inherent in internet connectivity that, despite efforts to mitigate the risk of the following occurring, could result in the loss of your privacy, information, property, data and other consequences.

Public Relations

- 14.10 We will provide you with the public relations Services set out in the Proposal which may include, without limitation: researching, drafting and editing press releases and, following your approval, disseminating press information to online and offline media; contacting journalists and following up on information presented; and evaluation and reporting of results.
- 14.11 You acknowledge and accept:
 - 14.11.1 we shall not be required to share our media databases or journalist contacts with you;
 - 14.11.2 we provide no guarantees as to the coverage to be gained by you;
 - 14.11.3 we shall not be required to print any matter which in our opinion is or may be of an illegal or libelous nature or an infringement of the Intellectual Property Right or other rights or any third party; and
 - 14.11.4 your approval or deemed approval (pursuant to clause 5) of: drafts and proofs shall be taken by us as authorisation to proceed to publication; and estimates provided by suppliers shall be your authorisation for us to enter into contracts with such suppliers on the basis of such estimates.

15. How Far We Are Responsible

- 15.1 Nothing in our Agreement excludes or limits the liability of either of us for:
 - 15.1.1 death or personal injury caused by either of us being negligent;
 - 15.1.2 fraud or fraudulent misrepresentation; or
 - 15.1.3 any other liability that cannot be excluded or limited by applicable law.
- 15.2 Subject to clause 15.1, we will be not be held liable under or in connection with our Agreement and whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution, or in any other way, for any of the following losses, no matter if those losses are direct or indirect: loss of profit, revenue or anticipated savings; loss of business or contracts; loss of goodwill; loss from wasted expenditure, wasted time or business interruption; loss, destruction or corruption of data; any liability to third parties; and any special, indirect or consequential loss or damage.
- 15.3 Subject to clauses 15.1 and 15.2, our total liability to you under or in connection with our Agreement, and whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution, or in any other way, will be limited to:
 - 15.3.1 where the first incident occurs in the first 12 months of our Agreement, the Charges that were paid or payable by you, for the first 12 months from the Effective Date; and

- 15.3.2 where the first incident occurs at any other time, the mean of the monthly Charges that were paid or payable by you, from the Effective Date to the date when the first incident occurred, multiplied by 12.
- 15.4 We shall not be liable:
- 15.4.1 in the event of any failure of any Deliverable or the Services to comply with the terms of our Agreement if this is caused or contributed by any Materials;
- 15.4.2 for any harmful communications or material attributable to Your Website or any links therefrom, nor shall we be liable for any unavailability or inoperability of the internet, Search Engines, management tools and accounts in connection with campaigns or the Services, or any computer network, or for loss of domain name, or for any corruption or loss of, or unauthorized access to, any information from whatever source;
- 15.4.3 any loss or damage suffered by you arising out of or in connection with any act, omission, misrepresentation or error made by you or on your behalf or arising from any cause beyond our reasonable control;
- 15.4.4 any delay in or omission of publication or transmission or for any error in any press or other publication unless such delay, omission or error is due to our own default or neglect; or
- 15.4.5 if there is an error in the Deliverables as published, or publication is delayed or does not occur as planned, we will not be liable unless this is caused by our default or neglect.
- 15.5 You acknowledge and accept that:
- 15.5.1 the provisions of our Agreement are essential to protect our legitimate commercial and business interests and that they are fair and reasonable having regard to the level of Charges;
- 15.5.2 the level of Charges properly reflect the delineation of risk between the parties; and
- 15.5.3 you have had the opportunity to seek and obtain legal advice on the terms of our Agreement whether or not you have chosen to do so.
- 15.6 This clause 14 shall survive the termination or expiry of our Agreement.
- 16. Dispute Resolution**
- 16.1 We will both do what we reasonably can to settle any dispute or claim that occurs under or in relation to our Agreement, and to avoid having to involve the courts or any other authority.
- 16.2 We will both use the following dispute resolution process:
- 16.2.1 whichever of us is affected will provide written notice of the complaint that clearly sets out the full facts and includes relevant supporting documents;
- 16.2.2 we will both use reasonable endeavours to settle the dispute within 14 days of getting the complaint and will make sure to give regular updates to the other during the 14 days; and
- 16.2.3 if the dispute is not settled after 14 days (or any other period agreed by both of us in writing), the dispute can be escalated to a senior executive of either of us (someone at director level or above).
- 16.3 Nothing in clauses 16.1 or 16.2 stops either of us:
- 16.3.1 seeking interlocutory or other immediate relief if one of us is at risk of imminent harm;
- 16.3.2 going to a court of competent jurisdiction if either of us considers it reasonable; or
- 16.3.3 doing anything else this Agreement lets us do.
- 17. Suspension**
- 17.1 We may restrict or suspend any Service if:
- 17.1.1 we suspect your breach of our Agreement;
- 17.1.2 you do not pay us any sums under our Agreement on time; or
- 17.1.3 if you do not pay what you owe us under any other contract that you have entered into with us, as set out in that other contract.
- 17.2 If we restrict or suspend the Service under clause 17.1 you will still have to pay the Charges that are payable for the Service until the Service ends and we will not be liable for any losses, damages, costs and/or expenses incurred by you as a result of such restriction or suspension.
- 18. When The Agreement Starts and How Long It Lasts**
- 18.1 Unless specified otherwise in the Proposal, our Agreement shall come into force on the Effective Date and, unless terminated earlier in accordance with its terms, shall continue for the Initial Term and shall thereafter continue automatically for periods of one year (each an **Additional Term**) unless terminated by either party giving the other not less than three months' prior written notice to terminate our Agreement at the end of the Initial Term or, as the case may be, the relevant Additional Term.
- 19. Terminating The Agreement**
- 19.1 Either of us may terminate our Agreement (whether in whole or in part) immediately at any time by giving notice in writing to the other party if:
- 19.1.1 the other party materially breaches any part of our Agreement and, where it is possible, the other party has not rectified the situation within 14 days after receiving notice of the breach;
- 19.1.2 the other party materially breaches any part of our Agreement and the situation cannot be rectified; or
- 19.1.3 the other party suffers an Insolvency Event.
- 19.2 We may terminate our Agreement (whether in whole or in part) if you do not pay any amount due to us under our Agreement on the due date and such amount remains unpaid within 5 days after you receive notice that the payment is overdue.
- 20. What Happens When The Agreement Terminates**
- 20.1 If our Agreement or a Service is terminated or expires, for any reason:
- 20.1.1 all licences granted by us to you shall terminate immediately;
- 20.1.2 you shall immediately pay us all our outstanding invoices;
- 20.1.3 we will invoice you for all Services performed but not yet invoiced and payment for such invoices shall be due immediately on receipt by you; and
- 20.1.4 you will destroy and delete or, if requested by us, return any copies of our Confidential Information in your possession or control (or in the possession or control of any person acting on your behalf).
- 20.2 Termination or expiry of our Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of our Agreement that is expressly or by implication intended to continue beyond termination.
- 21. Non-Solicitation**
- 21.1 In order to protect our legitimate business interests, during the Restricted Period you shall not, either directly or indirectly, by or through yourself, any of your Affiliates, agents or otherwise, or in conjunction with your any of your Affiliates, agents or otherwise, whether for your own benefit or for the benefit of any other person:
- 21.1.1 solicit, entice or induce, or endeavour to solicit, entice or induce, any Restricted Person of ours with a view to employing or engaging the Restricted Person; or
- 21.1.2 employ or engage, or offer to employ or engage a Restricted Person of ours,
- without our prior written consent beforehand.
- 21.2 Notwithstanding clause 21.1 you may employ or engage a Restricted Person of ours who has responded directly to a bona fide recruitment drive either through a recruitment agency engaged by you or via an advertisement placed publicly by you (either in the press, social media, online or in trade and industry publications).
- 22. Notices**
- 22.1 If one of us needs to give the other notice, they will do it in writing and:
- 22.1.1 send it by email, in the case of notices from us to you only;
- 22.1.2 deliver it by hand; or
- 22.1.3 send it by first class post, recorded delivery or courier.
- 22.2 Notices need to be sent to:
- 22.2.1 us, at the postal address shown on our invoice or any other address that we tell you to send notices to; or
- 22.2.2 you, at the address and email address set out in the Order or any other address or email address you tell us to use by giving notice to us.
- 22.3 The recipient of the notice is deemed to have received the notice on the date (or if the date is not a Business Day, then on the next Business Day):
- 22.3.1 of transmission, if it is an email;
- 22.3.2 the notice is left at the address or someone signs for it on behalf of the addressee, if it is delivered by hand or sent by courier; or
- 22.3.3 two days after posting, if it is sent by first-class post or recorded delivery.
- 23. Other General Terms**
- 23.1 Our Agreement constitutes the entire agreement between us and supersedes all previous agreements, understandings and arrangements between us in respect of its subject matter, whether in writing or oral. Each of us acknowledges that it has not entered into our Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in our Agreement. Nothing in our Agreement shall limit or exclude any liability for fraud.
- 23.2 No variation of our Agreement shall be valid or effective unless it is made in writing, refers to our Agreement and is duly signed or executed by, or on behalf of, each party.
- 23.3 If we are affected by any Force Majeure we will:
- 23.3.1 not be liable for failing to do something we should have done, or for not doing it completely or on time to the extent this is caused by any Force Majeure; and
- 23.3.2 have a reasonable amount of extra time to perform the obligation that is affected by the Force Majeure event.

- 23.4 Except as expressly provided in our Agreement, we may at any time assign, sub-contract, sub-licence, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of our rights or obligations under our Agreement.
- 23.5 Except as expressly permitted by our Agreement, you shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of your rights or obligations under our Agreement (including the licence rights granted), in whole or in part, without our written consent beforehand.
- 23.6 We may refer to you as our client in advertising and promotional material. We shall obtain your written consent (not to be unreasonably withheld, conditioned or delayed) to publish those materials prior to release.
- 23.7 You shall pay all sums that you owe to us under our Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 23.8 The both of us are independent and are not partners or principal and agent and our Agreement does not establish any joint venture, trust, fiduciary or other relationship between us, other than the contractual relationship expressly provided for in it. Neither of us shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.
- 23.9 If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of our Agreement shall not be affected. If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the both of us shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 23.10 No failure, delay or omission by either of us in exercising any right, power or remedy provided by law or under our Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy. No single or partial exercise of any right, power or remedy provided by law or under our Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy. A waiver of any term, provision, condition or breach of our Agreement shall only be effective 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.
- 23.11 A person who is not a party to our Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.
- 23.12 Our Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 23.13 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, our Agreement, its subject matter or formation (including non-contractual disputes or claims).

APPENDIX 1

DEFINED TERMS

In our Agreement:

- **Account Manager** means the person appointed by each of us to represent it in relation to day to day matters arising in relation to the Services and our Agreement.
- **Additional Term** has the meaning set out in clause 18.1.
- **Affiliate** means any entity that directly or indirectly Controls or is Controlled by, or is under common Control with another entity.
- **Applicable Laws** means any laws and regulations, as may be amended from time to time, that apply to the provision or receipt of each Service.
- **Business Day** means a day other than a Saturday, Sunday or bank or public holiday in England.
- **Change** means any change to our Agreement including to any of the Services.
- **Change Request** means a written request submitted by one of us to the other to effect a Change.
- **Charges** means the charges that you pay us for the performance of each Service (but excluding any Expenses and Programme Costs (as each of those terms are defined in clause 6.2)).
- **Clearsilver, we, us and our** means Clearsilver Brand Marketing Limited of The Tetley, 3rd Floor, Hunslet Road, Leeds LS10 1JQ registered in England with company number

08613373, except where it is clear from the context that references to "we" or "our" means both of us.

- **Clearsilver Privacy Policy** means the policy that we have implemented and may update from time to time on how we Process Personal Data and that is set out at: www.clearsilver.co.uk/privacy.
- **Client, you and your** means the person identified as the client in the Proposal.
- **Conditions** means the terms set out in the clauses and other provisions of this document, as amended from time to time in accordance with our Agreement.
- **Confidential Information** means any information that is confidential in nature concerning one of us or our Affiliates including, details of either of our businesses, affairs, customers, suppliers, plans or strategies, no matter how it is recorded, stored or disclosed.
- **Control** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **Controls** and **Controlled** shall be interpreted accordingly.
- **Controller** shall have the meaning given to it in applicable Data Protection Laws from time to time.
- **Data Protection Laws** means, as binding on either of us or the Services: the GDPR; the Data Protection Act 2018; any laws which implement any such laws; and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.
- **Data Subject** shall have the meaning given to it in applicable Data Protection Laws from time to time.
- **Deliverable** means the outputs of the Services specified in the Proposal or otherwise agreed between us from time to time which may include, without limitation, press releases, designs, campaigns, plans, artwork, websites, applications, social media posts and content.
- **Effective Date** means the date on which Order Acceptance occurs.
- **Force Majeure** means an event or sequence of events beyond our reasonable control preventing or delaying us from performing our obligations under our Agreement, including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet.
- **GDPR** means the General Data Protection Regulation (EU) 2016/679 and any amendment or replacement to it (including any corresponding or equivalent national law or regulation that implements the GDPR).
- **Initial Term** has the meaning set out in the Proposal.
- **Insolvency Event** means if a party:
 - (a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - (b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986;
 - (c) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - (d) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - (e) has a resolution passed for its winding up;
 - (f) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - (g) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced; or
 - (h) has a freezing order made against it.
- **Intellectual Property Rights** means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case: whether registered or not; including any applications to protect or register such rights; including all renewals and extensions of such rights or applications; whether vested, contingent or future; and wherever existing.
- **International Organisation** shall have the meaning given to it in applicable Data Protection Laws from time to time.
- **Materials** means any and all information, content, data, documentation, designs, text, drawings, graphics, logos, photographs, images, moving images, sounds, illustrations and other materials provided by you to us.
- **Order Acceptance** means acceptance of an Order by us in accordance with clause 1.4.
- **Order** means your order for the Services issued to us by you either verbally or in writing.
- **Personal Data** shall have the meaning given to it in applicable Data Protection Laws from time to time.

- **Personnel** means all of our employees, officers, staff, other workers, agents and consultants who are engaged in the performance of the Services from time to time.
- **Processing** shall have the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including process, processing, processed, and processes shall be construed accordingly).
- **Processor** shall have the meaning given to it in applicable Data Protection Laws from time to time.
- **Proposal** means our proposal to you on the Services to be provided and our associated Charges.
- **Protected Data** means Personal Data received from or on your behalf in connection with the performance of our obligations under our Agreement.
- **Rates means our agreed hourly charge out rates as set out in the Proposal.**
- **Representatives** means employees, officers, representatives or advisers.
- **Restricted Period** means the Term and a period of six months after the Term.
- **Restricted Persons** means any person employed or engaged by us at any time during the Term in relation to the provision of the Services who has or had material contact or dealings with you.
- **Search Engine** means a software system provided by a third party that allows a person to search on the internet.
- **Search Engine Policies and Procedures** means the policies and procedures of Search Engines.
- **Service** means those services that we have agreed to provide you under our Agreement, as set out in the Proposal or otherwise agreed between us in writing from time to time

which may include, without limitation, public relations, design and artwork, print and production, search engine optimisation, website design and build, website hosting and management, social media marketing, pay-per-click, prize fulfilment, production of online competitions, social media management and strategy development, research & planning.

- **Service Levels** means the agreed minimum level of performance we will provide for a Service, as set out in the Proposal or otherwise agreed between us in writing from time to time.
- **Service Description** means the description or specification of the Services set out or referred to in the Proposal.
- **Special Conditions** means terms additional to these Conditions applicable to our Agreement agreed between us in writing from time to time.
- **Standard Hourly Rates** means our hourly rates as prevailing from time to time.
- **Sub-Processor** means a supplier or subcontractor engaged by us to Process Protected Data for the purpose of our Agreement.
- **Term** means the period between Order Acceptance and the expiry or termination of our Agreement.
- **VAT** means United Kingdom value added tax, any other tax imposed in substitution for it.
- **Year** means a period of 12 months commencing on the Effective Date and each 12 month period thereafter during the Term.