

Standard Terms and Conditions

This agreement takes effect from the Proposal Acceptance Date between Appeal Marketing Limited, a limited company registered in England and Wales with number 10705670 and having its registered office at 30-31 St James Place, Mangotsfield, Bristol, BS16 9JB (“**Appeal**” or “**Appeal Digital**” or “**Supplier**”); and the person or Company set out in the Proposal (“the Client”).

1. Definitions

- 1.1. In this Agreement, unless expressly stated to the contrary, the following expressions shall have the following meanings:

Agreement	this agreement with its Proposal, Engagements and Appendices as varied from time to time;
Appendices	As defined in clause 1.6.5;
Business Day	a day other than a Saturday or Sunday or public holiday in England and Wales;
Commencement Date	has the meaning provided in the Proposal;
Engagement	each engagement of Appeal by the Client to provide Services under this Agreement as agreed from time to time and each of these shall be considered as a Proposal to this Agreement;
Fees	The fixed cost set out in the Proposal;
Intellectual Property Rights	copyright, database rights, trade marks, service marks, designs and logos, design rights and registered designs, know-how and all other rights of a similar nature anywhere in the world in each case whether registered, unregistered or incapable of registration;
Proposal	a document in a form as issued by Appeal based upon the Fees and the time to be required to carry out the relevant Services;
Acceptance Date	The date upon which the Client accepted the Proposal thereby adhering to this Agreement.
Services	those services as detailed in the Proposal and any other Services agreed under Engagements;
Term	has the meaning provided in the Proposal;
Writing	includes cable, transmission by electronic means, e-mail and comparable means of communication.

- 1.2. References to statutes or statutory provisions shall be construed to include references to those statutes or provisions as amended or re-enacted (whether with or without modification) from time to time or as their application is modified by other provisions (whether before or after the date of this Agreement) and shall include any statute or provision of which they are re-enactments (whether with or without modification) and shall also include any orders, regulations, instruments or other subordinate legislation under the relevant statute or statutory provision.
- 1.3. The headings in this Agreement are for ease of reference only and shall not in any way affect its construction or interpretation.
- 1.4. Reference to a party to this Agreement shall include its personal representatives, successors in title and permitted assigns.
- 1.5. The Proposal (which shall include the Engagements) forms part of this Agreement and shall be construed and have the same full force and effect as if expressly set out in the main body of this Agreement except that, in the event of a conflict between the terms of the main body of this Agreement and the terms of the Proposals, the terms of the Proposals shall prevail except in relation to clause 10 (Limitation of Liability) unless the Proposal or Engagement expressly refers to clause 10 and specifically states that it prevails over a particular part of clause 10.
- 1.6. Unless expressly stated to the contrary in this Agreement.
 - 1.6.1. words denoting the singular include the plural and vice versa, words denoting any one gender include all genders and vice versa, and references to persons include individuals, partnerships, bodies corporate and unincorporated associations;
 - 1.6.2. a reference to a recital, clause or Proposal is a reference to a recital or clause of or Proposal to this Agreement and a reference to a sub-clause is a reference to a sub-clause of the clause in which the reference appears;
 - 1.6.3. expressions defined in the Companies Act 2006 shall have the same meanings in this Agreement;
 - 1.6.4. the words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.
 - 1.6.5. The Appendices form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Appendices.

2. Term of Agreement

Appeal shall provide the Services for the Term from the Commencement Date as detailed in the Proposal.

3. Provision of the Services

- 3.1. In this Agreement, unless expressly stated to the contrary, the following expressions shall have the following meanings:
 - 3.1.1. using all reasonable skill and care, and will apply an approach to the reasonable satisfaction of the client; and
 - 3.1.2. in accordance with all relevant laws and, so far as is appropriate, codes of practice (whether voluntary or otherwise).
- 3.2. The Client shall provide to Appeal such information, materials, facilities and access to premises as is reasonably required by Appeal in order to provide the Services satisfactorily and effectively.
- 3.3. Appeal Digital shall use all reasonable endeavors to meet any performance dates specified in the Agreement, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.4. Prior to the delivery of any Engagements not set out in the Proposal or any agreement to change the Services, Appeal will on the Client's request submit a Proposal for agreement by the parties and otherwise the parties will agree the terms of the Engagement. All Engagements will be subject to the terms of this Agreement.
- 3.5. Any samples, drawings, descriptive matter or advertising issued by Appeal Digital, and any descriptions or illustrations contained in Appeal Digital's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

4. Pricing and invoicing

- 4.1. In this Agreement, unless expressly stated to the contrary, the following expressions shall have the following meanings:
- 4.2. The Client shall pay invoices to Appeal no later than 30 days of receipt of each invoice.
- 4.3. If the Client fails to make a payment due to Appeal Digital under the Contract by the due date, then, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 4.4 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 4.4. All amounts stated are exclusive of value added tax which shall be charged at the appropriate prevailing rate and added to the relevant invoice.

5. Intellectual Property Rights

- 5.1. Appeal agrees that all Intellectual Property Rights of the Client and its licensors shall remain vested in the Client or its licensors (as appropriate), and Appeal is licensed to use those Intellectual Property Rights subsisting in any materials submitted to Appeal by the Client solely for the purpose of performing Appeal's obligations under this Agreement.
- 5.2. The Client agrees that all Intellectual Property Rights of Appeal and its licensors shall remain vested in Appeal or its licensors, and that no licence is granted and no transfer, assignment

or licence shall be deemed to have arisen or implied in any Intellectual Property Rights of Appeal or its licensors except as expressly set out below in this clause.

- 5.3. If in the course of, or as a result of, any of the Services provided by Appeal to the Client, Appeal or any of its employees or agents creates any other material exclusively for the Client as part of the Services which is protected by Intellectual Property Rights, these rights in the material shall only upon full payment to Appeal of the Fees for such material, vest in the Client, and after such vesting Appeal nor any of its employees or agents shall have any rights (including Moral Rights) in them beyond a non-exclusive licence to use, and/or make copies of, any such material for internal use for the purpose of providing the Services.
- 5.4. Until such vesting in the Client, Appeal grants to the Client, a non-exclusive licence to use such material, for any purpose connected with the purpose for which the Services are provided. If such payment is overdue for more than 30 days, such licence shall terminate immediately upon written notice of such termination served by Appeal on the Client.
- 5.5. Appeal shall use its reasonable endeavours to ensure that all Intellectual Property Rights vested in any third party supplier of material commissioned by Appeal for the Client (but not stock photographs, film or photographic negatives obtained from news or photographic agencies) shall be assigned so far as practicable to the Client, and that the moral rights relating to it are waived by the third party. In the event that it will not be possible for Appeal to do so, Appeal shall notify the Client of such circumstances prior to instructing such third party to undertake the work.
- 5.6. For the avoidance of doubt, any Intellectual Property Rights in the deliverables which will not be owned by the Client will be set out in the Proposal.

6. Intellectual Property Rights indemnity

- 6.1. Subject to the provisions of this clause, Appeal undertakes at its own expense to defend the Client or, at Appeal's option, settle, any claim or action brought against the Client alleging that the possession or usual use of the material created by Appeal for the Client infringes any Intellectual Property Rights of a third and shall be responsible for any damages and costs (including legal fees) awarded against the Client as a direct result of such claim.
- 6.2. The undertaking in clause 6.1 above shall not apply to an infringement claim to the extent to which it is attributable to modification of the material by the Client or by reason simply of Appeal's following the Client's specification or caused by any breach by the Client of this Agreement.
- 6.3. The undertaking in clause 6.1 shall also not apply unless the Client:
 - 6.3.1. promptly informs Appeal of any actual, threatened or alleged infringement or claim;
 - 6.3.2. allows Appeal to conduct and/or settle all negotiations, proceedings and litigation and shall not make any admission as to liability or shall not compromise or agree to any settlement of any such infringement claim without the prior written consent of Appeal;
 - 6.3.3. provides all assistance and information reasonably required by Appeal in connection with any such claim and, if Appeal so requests, joins in any court or other proceedings relating to such infringement to the extent required by Appeal.
- 6.4. If any such infringement claim is made, or in Appeal's reasonable opinion is likely to be made, against the Client, Appeal may at its sole option and expense:
 - 6.4.1. procure for the Client the right to continue using the material for its usual use in accordance with the terms of this Agreement;
 - 6.4.2. modify the material so that it ceases to be infringing;
 - 6.4.3. replace the material with non-infringing material; or
 - 6.4.4. terminate this Agreement immediately by notice in writing to the Client and refund or cancel a reasonable amount of the Fees paid or payable by the Client on return of the material to Appeal, and the Client shall on demand return the material to Appeal.

7. Compliance

- 7.1. Appeal shall not, on behalf of the Client, do, say, write or otherwise communicate anything that is or is construed to be:
 - 7.1.1. against public morals or sensitivities;
 - 7.1.2. illegal or contrary to any government regulations;
 - 7.1.3. unsolicited or unauthorised advertising or promotion or any other form of wrongful solicitation;
 - 7.1.4. infringement of any right of privacy; and/or
 - 7.1.5. harmful to minors.

- 7.2. Appeal also agrees to comply with all applicable laws and, so far as is reasonable, relevant industry codes of practice.

8. Non-solicitation and employment

- 8.1. Each of the parties undertakes with the other not, either on its own account or in association with any person, whether directly or indirectly during the term of this Agreement, and for a period of the following 6 months, to (a) solicit or entice away or (b) employ or engage in each case, any Senior Employee of the other party. A "Senior Employee" is defined as an employee who has contact with the other party and is significantly involved in the performance or acceptance of any of the Services.
- 8.2. Either party shall be entitled by giving at any time or times written notice to the other to designate any of its employees as not a "Senior Employee" for this purpose or otherwise reduce the extent of the other party's obligation under this clause.
- 8.3. Notwithstanding the foregoing nothing shall prevent either party from recruiting an employee of the other party who has responded to a bona fide job advert not aimed specifically at employees of the other party.

9. Insurance

- 9.1. Appeal will maintain throughout the term of the Agreement at least:
 - 9.1.1. Professional Liability Insurance of £500,000;
 - 9.1.2. Employers insurance of £10,000,000; and
 - 9.1.3. Public Liability Insurance of not less than £1,000,000; each on a per claim or series of connected claims basis.
- 9.2. On request by the Client, Appeal shall provide the Client with reasonable documentary evidence of compliance with this clause including copies of all insurance policies and relevant renewal receipts.

10. Limitation on liability

- 10.1. Subject to clauses 10.3 and 10.8, Appeal's liability, however arising, is limited as follows:
- 10.1.1. Appeal's liability in respect of any claims and remedies relating to loss of or damage to the tangible property of the Client or of its staff to the extent caused by Appeal's negligence shall be limited to the cost of repair or replacement of the lost or damaged property and shall not exceed the amount recovered by Appeal from its insurers in respect of such a claim under the insurance referred to in clause 9.1.3, up to the limit of cover specified in that clause;
 - 10.1.2. Appeal's total aggregate liability for all other claims and remedies, which arise in a Contract Year is limited to 100% of the Fees paid (or which ought to have been paid) for the Services provided or to be provided in such Contract Year. "Contract Year" means a 12 month period starting on the Commencement Date and each anniversary of that date.
- 10.2. Subject to clauses 10.3 and 10.8, The Client's liability, however arising, is limited as follows:
- 10.2.1. The Client's total aggregate liability for all other claims and remedies, which arise in a Contract Year is limited to 100% of the Fees paid (or which ought to have been paid) for the Services provided or to be provided in such Contract Year. "Contract Year" means a 12 month period starting on the Commencement Date and each anniversary of that date.
- 10.3. Notwithstanding any other provision of this Agreement, but subject to clause 10.8, neither Party shall have any liability to the other however arising for any:
- 10.3.1. direct or indirect loss of or damage to:
 - a. profit;
 - b. revenue;
 - c. business;
 - d. contracts;
 - e. opportunities;
 - f. anticipated savings;
 - g. data;
 - h. goodwill; or
 - i. use; or
 - 10.3.2. direct or indirect loss of or damage to:
- 10.4. The parties agree that each of the sub-clauses in clause 10.3 and each of the sub-paragraphs 10.3.1(a) to 10.3.1(i) constitute separate terms and the introductory wording of clause 10.3 shall be applied to each of them separately. If there is any claim or finding that any such individual sub-clause or sub-paragraph is unenforceable for any reason, such unenforceability shall not affect any other provision within clause 10.3 or otherwise.
- 10.5. Appeal shall not be liable however arising for any delay to or failure to provide the Services caused by:
- 10.5.1. errors in information or instructions supplied by the Client;
 - 10.5.2. the late arrival or non-arrival of material or information from the Client;

- 10.5.3. failure to detect errors in any of the Services performed by Appeal which the Client should reasonably have checked (e.g. proof reading of material) or has undertaken to check; or
- 10.5.4. any act or omission of the Client.
- 10.6. The term “however arising” when used or referred to in this Agreement shall cover all causes and actions giving rise to liability, arising out of or in connection with this Agreement and/or the Services (i) whether arising by reason of any misrepresentation (whether made prior to and/or in this Agreement) negligence, other tort, breach of statutory duty, repudiation, renunciation or other breach of contract, restitution or otherwise; (ii) whether arising under any indemnity or by reason of any express right or remedy in favour of the Client; (iii) whether caused by any total or partial failure or delay in supply of the Services; and (iv) whether deliberate (but not in bad faith) or otherwise, however fundamental the result.
- 10.7. The exclusions and limitations of liability contained in this Agreement shall apply regardless of whether the loss or damage was foreseeable or whether the Client notifies Appeal of the possibility of any greater loss or damage.
- 10.8. Appeal’s liability shall not be limited or excluded by any provision of this Agreement to the extent prohibited or limited by law and in particular nothing in this Agreement shall affect liability:
 - 10.8.1. for death or personal injury caused by negligence to the extent prohibited by the Unfair Contract Terms Act 1977;
 - 10.8.2. for fraudulent misrepresentation or other fraud; or
 - 10.8.3. for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 10.9. Appeal’s obligations regarding the standards for and quality of the Services are only as set out in the express terms of this Agreement. All other duties, warranties, conditions, terms and liabilities in respect of the quality of the Services that are imposed on the Appeal by law (including terms implied by statute, common law or otherwise) are excluded except to the extent such exclusion is prohibited or limited by law.
- 10.10. In view of this Agreement being with Appeal, the Client will not bring any claim, however arising, against any of Appeal’s employees, consultants, members or other individuals on its staff personally regardless of the involvement of those individuals in the provision of the Services. This will not limit or exclude Appeal’s liability for the acts or omissions of any of those individuals. Without prejudice to this, to the extent determined from time to time by Appeal, all such individuals shall be entitled to benefit from the exclusions and limitations of liability expressed in favour of Appeal, so that the maximum liability however arising of such persons and Appeal in total shall be no greater than the maximum liability of Appeal alone as set out in this Agreement.
- 10.11. Appeal may at any time, by notice in writing provided to the Client, waive the benefit of the exclusions and limitations of liability expressed in favour of Appeal.

11. Data protection

- 11.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Data Protection clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Data Protection clause, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the Data Protection Legislation from time to time in force in the UK and any other law that applies in the UK.
- 11.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and the Supplier is the processor.
- 11.3. Without prejudice to the generality of this clause, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.
- 11.4. Without prejudice to the generality of this clause, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Proposal:
 - 11.4.1. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 11.4.2. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - 11.4.3. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - a. the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
 - b. the data subject has enforceable rights and effective legal remedies;
 - c. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - d. the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;

- 11.4.4. assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 11.4.5. notify the Client without undue delay on becoming aware of a personal data breach; and
 - 11.4.6. at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the personal data.
- 11.5. The Client consents to the Supplier appointing a third party processor of personal data under the Proposal. The Supplier confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement substantially on that third party's standard terms of business reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this Data Protection clause.

12. Confidentiality

- 12.1. Without prejudice to each party's other rights and remedies, each party shall treat as confidential (during and for a period of at least 5 years after termination of this Agreement) any information which is, by its nature confidential, that is, or has been, disclosed to it by the other or any such information that has come to that party's attention or otherwise obtained by that party in pursuance of the matters contemplated under this Agreement, and shall not divulge any such information to a third party and shall not make any use of such information (other than in performance of this Agreement) without the other's written consent (not to be unreasonably withheld) provided that this clause will not apply to information which:
- 12.1.1. at the time of disclosure is in the public domain or belongs to a third party;
 - 12.1.2. after disclosure becomes part of the public domain otherwise than by breach by a party of the provisions of this Agreement;
 - 12.1.3. was already in the possession of the receiving party at the time of disclosure;
 - 12.1.4. was received by the receiving party after disclosure from a third party who was not required to hold it in confidence; or
 - 12.1.5. is trivial or obvious.
- 12.2. Nothing in this Agreement shall prevent a party from disclosing information:
- 12.2.1. to those of its officers and employees reasonably required to have it in order for such party to perform its obligations under this Agreement, provided that such party shall procure that such officers and employees comply with the provisions of this clause;
 - 12.2.2. to its solicitors, accountants, insurers and other professional advisors reasonably required to have it; and
 - 12.2.3. which is required to be disclosed by a party by an order of any court of competent jurisdiction or in connection with any proceedings of any such

court or otherwise by force of law or regulation having the force of law or the rules of any code or regulatory authority.

- 12.3. Each party shall on demand and on termination of this Agreement surrender to the other all documents, notes and memoranda relating to such confidential information in its possession or in the possession of its employees agents and sub-contractors except to the extent that is reasonable to enable that party to retain evidence of its proper performance of this Agreement.

13. Announcements

Each party undertakes that, except as may be required by law or regulation having the force of law or the rules of any code or regulatory authority, neither it nor any of its employees, agents or contractors shall make, or cause to be made, (whether to the public, press, employees, customers, suppliers or otherwise) any media statement, announcement, communication or other disclosure whatsoever, whether written or oral, in relation to the other party to this Agreement, the existence of this Agreement or any matter referred to in this Agreement without the other's party's prior written approval of its contents.

14. Force Majeure Event

- 14.1. A "**Force Majeure Event**" means any circumstance not within a party's reasonable control including, without limitation:
- I. acts of God, flood, drought, earthquake or other natural disaster;
 - II. epidemic or pandemic;
 - III. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - IV. nuclear, chemical or biological contamination or sonic boom;
 - V. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - VI. collapse of buildings, fire, explosion or accident;
 - VII. any labour or trade dispute, strikes, industrial action or lockouts;
 - VIII. non-performance by suppliers or subcontractors; and
 - IX. interruption or failure of utility service.
- 14.2. If a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (the "**Affected Party**"), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 14.3. The Affected Party shall:
- I. as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its

- likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- II. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 14.4. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than six (6) months, the party not affected by the Force Majeure Event may terminate this agreement by giving two (2) weeks written notice to the Affected Party.

Covid-19 and other public health emergencies

- 14.5. Both Parties enter into this agreement in the knowledge that there is a risk of further disruption to the ongoing Covid-19 pandemic. Both parties agree that there is a risk that further restrictions may be imposed by the government and/or public health bodies for public health reasons with minimal notice. This clause is applicable if the Services cannot be provided as planned for one or more of the following reasons (the following list is not exhaustive), as a result of further public health concerns:
- 14.6. A government restriction on the provision of Services in their entirety;
- 14.7. Public health guidance on social distancing that means that the Supplier will no longer be able to utilise its employees;
- 14.8. Public health guidance and/or government restrictions on travel that result in the Supplier's employees being unable to go to their respective offices, the premises, or their required work location; and/or
- 14.9. Any other public health guidance that leads to employee shortages for the Parties.
- 14.10. Unless both Parties agree otherwise, if the Services are postponed under this clause or clause 1.1, the Parties agree to uphold the terms and conditions of this agreement, subject to unavoidable impacts caused by Coronavirus or a Force Majeure Event as set out in clause 1.1 above.
- 14.11. Should the Parties breach any either national or local government law regarding social distancing, permissible gatherings or any pandemic legislation current at the time of breach then each Party will be liable in full for any fines or penalties incurred by themselves.

15. Further assurance

Each of the parties hereby agrees to use reasonable endeavours to do, or cause to be done, all things necessary, proper, or advisable to give full effect to the transactions contemplated by this Agreement as expeditiously as practicable including, without limitation, the performance of such further acts or the execution and delivery of any additional instruments or documents as may be reasonably necessary for effecting the purposes of this Agreement and the transactions contemplated by this Agreement.

16. Default and early termination

- 16.1. Without affecting any other rights or remedies it may have, either party may terminate, or suspend performance under, this Agreement within one month on giving notice in writing to the other party if the other party:
- 16.1.1. commits any material breach of this Agreement and (in the case of a breach capable of being remedied) shall have failed to remedy such breach within 21 days after receiving a written notice of such breach warning of an intention to terminate and requiring such breach to be remedied within such 21 day period; or
 - 16.1.2. has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets which is not discharged or paid out in full within 5 Business Days or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the relevant party is incorporated, resident or carries on business.
- 16.2. In addition to and notwithstanding any other provisions of this Agreement Appeal shall have the right to suspend providing the Services and/or terminate this Agreement at any time on written notice to the Client if the Client fails to pay any sum due under this Agreement 30 days after the date of receipt of the invoice for such sums.

17. Termination

Any termination of this Agreement howsoever caused shall not affect:

- 17.1. any right or liabilities which have accrued prior to the time of termination; or
- 17.2. the continuance in force of any provision hereof which expressly or by implication is intended to come into or continue in force after termination. Including, but not limited to, clauses 1, 5, 6, 8, 10, 11, 12, 13, 15, 17 – 28 (inclusive).

18. Assignment and subcontracting

- 18.1. Neither party shall be entitled to assign, novate, charge or hold on trust for another any of its interest and any of its obligations under this Agreement in whole or in part or sub-contract any of its obligations under it, provided that Appeal shall be entitled to subcontract obligations and any of its rights and obligations under this Agreement to a successor to its business or to its Group Member(s). Group Member in relation to a party means that party and any group undertaking of that party (as the same is defined in Section 1162 of the Companies Act 2006) in each case from time to time.

- 18.2. Despite Appeal's right to sub-contract pursuant to Clause 18.1, Appeal shall remain responsible for all acts and omissions by its subcontractors and the act and omissions of all those employed or engaged by the sub-contractors as if they were their own. An obligation on Appeal to do, or refrain from doing, any act or thing shall include an obligation on Appeal to presume that its employees, staff and agents and its subcontractors employees, staff and agents also do, or refrain from doing such act.
- 18.3. Any assignment made pursuant to this clause shall not relieve Appeal of any of its obligations under this Agreement.

19. Entire Agreement

- 19.1. This Agreement, and the other documents entered into pursuant to it, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement or understanding between the parties with respect to the arrangements contemplated by or referred to in them.
- 19.2. Each of the parties acknowledge and agree that:
 - 19.2.1. in entering into this Agreement, and the other documents entered into pursuant to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made) or understanding of any person (whether party to this Agreement or not) which is not expressly set out in this Agreement; and
 - 19.2.2. the only remedy available to it for breach of any statement, representation, warranty or other term which is expressly set out in this Agreement shall be for breach of contract under the terms of this Agreement.
- 19.3. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

20. Variation

Except as expressly provided in this Agreement no variation of this Agreement or any documents entered into pursuant to it, shall be effective unless it is made in writing and signed by each of the parties to the Agreement or on their behalf by duly authorised representatives. For the purposes of this clause, the expression "variation" includes any supplement, deletion or replacement however effected.

21. Waiver

Any failure to exercise or delay by a party in exercising a right or remedy arising in connection with this Agreement or by law shall not constitute a waiver of such right or remedy or of any other rights or remedies. No waiver shall be effective unless in writing and signed by the relevant party or on his behalf by a duly authorised representative. A waiver of a right or remedy on one occasion shall not constitute a waiver of the same right or remedy in the future.

22. Invalidity and severance

If any one or more provisions of this Agreement shall be declared to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this Agreement shall not as a result in any way be affected or impaired. However, if any provisions of this Agreement shall be adjudged to be void or ineffective but would be adjudged to be valid and effective if part of the wording were deleted or the scope or periods reduced, they shall apply with such modifications as may be necessary to make them valid and effective while adhering as closely as possible to the original intent, period and scope of the provisions and the parties hereby undertake to make such modifications.

23. Relationship of the parties

Nothing in the Agreement shall be:

- 23.1. deemed to constitute a partnership, joint venture, representative or agency relationship between the parties hereto; or
- 23.2. construed or have effect as constituting any relationship of employer and employee between the parties.

24. Notices

- 24.1. Any notices under this Agreement, other than the service of legal process which shall be governed by clause 27, shall be in writing and signed by or on behalf of the party giving it.
- 24.2. Any such notice may be served by delivering it by hand or by sending it by pre-paid recorded delivery post at or to the address shown above of the relevant party or any other address in the United Kingdom which it may from time to time notify in writing to the other parties.
- 24.3. Any such notice delivered by hand shall be deemed to be received when delivered (or, if delivered otherwise than between 9.00am and 5.00pm on a Business Day, at 9.00am on the next Business Day); and any notice sent by pre-paid recorded delivery post shall be deemed to be received 2 Business Days after posting and in proving the time of despatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted.
- 24.4. For the purpose of Clause 24, 'writing' shall not include fax, e-mail, SMS text message, or any other medium of electronic communication.

25. Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed by one or more of the parties hereto shall constitute an original but all of which, when dated with the same date, shall constitute one and the same agreement.

26. Governing Law and Jurisdiction

This Agreement and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto irrevocably submit to the non - exclusive jurisdiction of the Courts of England and Wales for the determination of all disputes or claims (including non-contractual disputes or claims) which may arise out of or in connection with this Agreement.

27. Service of legal process

Each party agrees that without preventing any other mode of service permitted by any rule of court any document in any proceedings (including but not limited to any claim form or other originating process) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 23 and each party undertakes to maintain such an address at all times in the United Kingdom and to notify the other party in advance of any change from time to time of the details of such address in accordance with the manner prescribed for service of notices under clause 23.

28. Contracts (Rights of Third Parties) Act 1999

No provision of this Agreement except clause 10.11 shall be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it. The consent of a third party is not required to cancel or vary this Agreement.

Appendix A

A 30-day technical limited warranty is included in the full price of the Services. The warranty period starts from the live date (the date the work is made available to the public). It is your responsibility to review the work to ensure it is satisfactory.

The warranty covers any bugs that prevent users from effectively using the site in the way that has been defined. Any changes or modifications that we do not define as a bug will be quoted for separately and are not fixed within the warranty.

Internal Factors

The following internal factors are covered by the warranty;

- Any bug that prevents the use of the website for its intended purpose as set out in the functional specification, or any of the supported browsers listed in Appendix B as fully supported or partially supported, that were missed during the internal QA process of UAT.
- Any bug on any of the supported browsers listed within Appendix B where support is listed as fully supported, that were missed during the internal QA process or UAT.

External Factors

The following external factors which could potentially introduce bugs are not covered by the warranty;

- A change in the integrations that prevents use of the website as defined in the functional specification. For example, an API update that prevents the website for being used for its intended purpose.
- A significant introduction of widely used web browser technology that prevents the user of the website as defined in the functional specification. For example, a new version of Google Chrome breaks the website across all platforms.
- A change of browser technology which changes the aesthetics of the website as such that it does not conform to the agreed design, but is still functional and completely usable.
- Any security / hacking incident affecting the hosting or domain services of the website.