

Standard Terms and Conditions for the Provision of Services by Thompson Brand Partners Ltd

(3 January 2010 Edition)

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/1 DEFINITIONS

The glossary at the end of these terms and conditions (the "Terms") contains certain definitions used in these Terms.

/2 APPLICATION OF THE TERMS

- 2.1 The Terms and (if any) the Special Conditions will apply to and be incorporated into:
 - 2.1.1 any contact or communication between TBPL and You, or their respective representatives; and
 - 2.1.2 each Contract (irrespective of how it is formed).
- 2.2 The parties may expressly agree in writing to disapply or vary any part of the Terms from time to time permanently or temporarily in respect of any Contract. Only a formally appointed and registered director of TBPL is authorised to do so for TBPL, and You will verify such status of such director before relying upon any disapplication or variation.
- 2.3 If there is a conflict between any Term and/or any Special Condition and/or any provision of the Estimate, the priority will be as follows:
 - 2.3.1 Term 2.1;
 - 2.3.2 the Estimate;
 - 2.3.3 the Special Condition; and then
 - 2.3.4 the other Terms.
- 2.4 Subject to Terms 2.1 and 2.3 (inclusive), the Terms prevail over any inconsistent statements, representations, warranties or terms (whether conditions or otherwise) contained, or referred to, in:
 - 2.4.1 any Document whatsoever supplied or published by or on behalf of You; and/or
 - 2.4.2 communicated and/or asserted by You verbally; and/or
 - 2.4.3 implied by law, trade custom, practice or course of dealing.
- 2.5 Any descriptions, specifications, drawings or performance figures given to You or published by TBPL are approximates only.
- 2.6 If Services and/or Deliverables are supplied to you in instalments, the Terms will apply to each instalment as if there was a separate Contract for each instalment.

/3 ORDERS AND CONTRACT FORMATION

- 3.1 You warrant and represent that You are solvent and have all the necessary capacity, authority, licences and consents to order the Services and/or Deliverables from TBPL (and enter into and perform each Contract) under these Terms.
- 3.2 TBPL intends (and You accept) that, subject to Terms 2.1 to 2.6 (inclusive), a Contract will form once all the following steps have been completed:
 - Step 1: You order the Services and the Deliverables.
 - Step 2: TBPL provides to You an Estimate, with a copy of the Terms and (if any) the Special Conditions.
 - Step 3: You and TBPL both sign the Estimate which (for the avoidance of doubt) will be deemed to incorporate the Terms and Special Conditions.

/4 COMMENCEMENT OF SERVICES

The Services supplied under a Contract will be provided to You by TBPL from the date specified in the Estimate or (subject to Term 2.2) as otherwise expressly agreed in writing by the parties.

/5 THE SERVICES

- 5.1 TBPL will carry out the Services in a manner consistent with:
 - 5.1.1 the Estimate;
 - 5.1.2 TBPL's generally accepted standards of quality and performance; and
 - 5.1.3 (without prejudice to the generality of the foregoing) in a timely manner and with all necessary diligence and care.
- 5.2 Subject to Term 6.5, TBPL will be responsible for obtaining necessary third party consents, rights, clearances and authorisations (the "TBPL Clearances") which may be required for use of the Final Products in accordance with the uses expressly specified in the Specifications. Clearances will not be obtained for uses of the Final Products which are not expressly set out in the Specifications and You will not use the Final Products in any manner not so specified.

- 5.3 In the event of delay as a result of Your failure to deliver the Client Materials or to give approvals at specific times pursuant to Your obligations under Term 6.1 and/or otherwise fail to observe and/or comply with Your duties and/or obligations under and/or in relation to a Contract, the period in which TBPL is due to perform its obligations will be extended and the Timetable will be amended accordingly.
- 5.4 TBPL will not be obliged to provide or to continue to provide the Services if TBPL believes, in its sole discretion, that all or part of the Services may be in breach of any applicable law or regulatory code or in any way immoral unlawful, obscene, defamatory or discriminatory Contract.
- 5.5 The Services will be performed on Working Days only.
- 5.6 TBPL will have the right, without limitation, to provide services for third parties which are or may be competitive with You or which offer products or services of the same or similar nature to those offered by You.
- 5.7 In respect of Print Services (if any are to be provided to You):
- 5.7.1 You acknowledge and agree that:
- (a) the colour and/or size of the Print Deliverables may be subject to reasonable variation from the Specifications in accordance with standard industry practice and that any such variation will not be a failure to materially comply with the Specifications for the purposes of Term 7.4;
 - (b) the quantities of the Print Deliverables set out in the Specifications are subject to standard industry margins for additional quantities of Print Deliverables or shortages of five per cent (5%) for Print Deliverables in one colour and ten per cent (10%) for all other Print Deliverables and TBPL will be entitled to increase the Fee in respect of additional quantities and reduce the Fee in respect of shortages.
- 5.7.2 TBPL will submit proofs of Print Deliverables to You for approval. TBPL will not be liable for any loss or damage incurred by You (without prejudice to Term 14) as a result of:
- (a) the failure of the Print Deliverables to meet the Specifications where You have authorised the printing and/or reproduction of initial artwork for the Print Deliverables without seeing final proofs; or
 - (b) any errors in proofs which have been approved by You.
- 5.8 In respect of Website Design Services (if any are to be provided to You):
- 5.8.1 Within fourteen (14) days (or such other time as the parties may agree) of notification to You of completion of the Website (the "Website Acceptance Period"), You will carry out tests to demonstrate that the Website (or part thereof as applicable) substantially provides the functionality set out in the Specification.
- 5.8.2 In the event that within the Website Acceptance Period You demonstrate to TBPL's reasonable satisfaction that the Website (or part thereof as applicable) fails to materially comply with the Specifications TBPL will use reasonable endeavours promptly to remedy the defect free of charge.
- 5.8.3 TBPL hereby grants to You a perpetual, non-exclusive, non-transferable licence to use the TBPL Software as part of and for the operation of the Website.
- 5.8.4 The licence granted under Term 5.8.3 will be royalty-free in respect of the TBPL Software and the Bespoke Software.
- 5.8.5 You acknowledge and agree that, save as permitted under Term 5.8.3, You will have no right, title or interest in the TBPL Software and nothing in the applicable Contract will operate to confer any right of ownership in the TBPL Software to You.
- 5.8.6 TBPL will at Your cost use reasonable endeavours to grant a sub-licence of the Third Party Software or procure a licence of the Third Party Software from the third party licensor to You.
- 5.8.7 You will not copy, reproduce, reverse engineer, disassemble, decompile, translate or modify the Software or any part thereof without the prior written permission of TBPL save as permitted pursuant to section 50B of the Copyright, Designs and Patents Act 1988 (concerning decompilation).
- 5.8.8 TBPL will not be liable to You for any detriment arising as a result of:
- (a) any use of the Software other than strictly in accordance with TBPL's instructions;
 - (b) the improper use or operation in respect of either the Software or the hardware it is run on;
 - (c) the use, modification or merger of the Software in whole or in part with any other Software or source code unless previously agreed in writing;
 - (d) any repair, adjustment, alteration or modification of the Software by any person other than TBPL without TBPL's express prior written consent;
 - (e) the use of the Software for a purpose for which it was not designed;
 - (f) any fault in the server or in any programs used in the conjunction with the Software.
- 5.8.9 Without prejudice to Terms 13.2, 14.2, 14.3 and 14.4 (but at all times subject to Term 14.1) TBPL excludes any warranty that:
- (a) the operation of the Website will be error-free or free from interruptions; and/or
 - (b) the Website will achieve any result other than as expressly specified in the Specification; and/or
 - (c) the Software will be free from any software corruption or problems (such as without limitation, viruses, trojans, worms, ad-ware, spy-ware or mal-ware).
- 5.8.10 You will ensure that from the Acceptance Date until such date as TBPL will notify to You in writing:
- (a) TBPL's name and the URL of the website operated by or on behalf of TBPL and notified to You (the "TBPL Website") will be prominently displayed on the homepage of the Website with an acknowledgement that the Website was designed and developed by TBPL ; and
 - (b) there will be a hypertext link from the homepage of the Website to the TBPL Website.

5.8.11 You will use Your best endeavours to avoid any action including, without limitation, making any alterations to the functionality or content of the Website which may in any way disparage or cause harm to TBPL or damage the goodwill in the TBPL business.

/6 YOUR OBLIGATIONS AND SUPPORT

- 6.1 You will in good faith co-operate to provide all such assistance to TBPL as TBPL may reasonably request for the purposes of and/or relating to any and all Contracts (including, without limitation, the provision of the Client Materials in an agreed format in accordance with the Timetable, Client Logos and such other approvals, information, data, instructions, as TBPL may reasonably require from time to time).
- 6.2 TBPL will be entitled to rely upon the accuracy and completeness of all Client Materials and information and data supplied to it by You pursuant to Term 6.1 or otherwise.
- 6.3 All Client Materials will be at Your risk while in transit or in the possession of TBPL unless otherwise agreed by the parties in writing and You will maintain in force throughout the Contract Period adequate insurance in respect of such risk.
- 6.4 You will notify TBPL in writing the name and job title and contact details of the person authorised to act on its behalf with respect to the arrangements contemplated in the Estimate and who, without prejudice to the generality of the foregoing, will render such decisions and approvals which may be required (the "Client's Authorised Representative" or "CAR"). You will notify TBPL in writing of any change to the CAR.
- 6.5 You will be responsible for ensuring that the Deliverables and/or Final Products meet with the requirements of all applicable laws, codes and regulations and will be responsible for obtaining, at Your own cost, all necessary consents, clearances and authorisations which may be required by all applicable regulatory authorities whatsoever and wheresoever located (including, without limitation, the Advertising Standards Authority, the Committee of Advertising Practice, OFCOM or any successor bodies) in relation to the use by You of the Deliverable and/or Final Products.
- 6.6 If You fail to perform, observe or comply with any of Your obligations and/or duties under and/or in relation to a Contract, TBPL may (without prejudice to any of TBPL's other rights and/or remedies) do any of the following whether or not it results in delayed or no delivery or performance of Deliverables and/or Services ordered by You:
- 6.6.1 terminate any and all aspects of any and all Contract(s) in whole or in part (without liability to You); and/or
- 6.6.2 refuse to make any subsequent delivery of ordered Deliverables and/or subsequent performance of the ordered Services which You have ordered (until, in the reasonable opinion of TBPL, You have fully remedied the non-performance, non-observation or non-compliance).
- 6.7 You will indemnify (on a £1 for £1 basis) and keep so indemnified TBPL (and its Relevant Persons) forthwith on demand against any liability, damages, expense, loss, claim or cost (including reasonable legal fees and expenses) suffered, sustained or incurred by TBPL in respect of any non-performance, non-observation or non-compliance or breach of any of Your obligations or warranties set out in a Contract or as a result of the use or misuse of the Deliverables and/or Final Products by You or Your Relevant Persons.

6.8 Without prejudice to TBPL's other rights or remedies, You will in good faith fully discuss and fully co-operate with TBPL in respect of each of Your reasonable complaints, grievances, demands or claims (if any) regarding the ordered Services and/or ordered Deliverables and/or Final Products in order to reach a reasonable solution.

6.9 For the avoidance of doubt, Your obligations and/or duties under and/or in relation to any Contract are independent from TBPL's obligations and/or duties under and/or in relation to that Contract.

/7 DELIVERY AND ACCEPTANCE

- 7.1 TBPL will use reasonable endeavours to deliver the Deliverables and/or Final Products (unless agreed otherwise by the parties in writing) to the Delivery Address, in a timely manner in accordance with the Timetable.
- 7.2 "Delivery" will take place when:
- 7.2.1 the Deliverables are delivered to the Delivery Address; or
- 7.2.2 (where You are to collect the Deliverables) when the Deliverables are ready to be loaded onto the vehicle used by You or Your agents.
- 7.3 Any and all risk in the Deliverables will pass to You on Delivery.
- 7.4 If the Deliverables meet the Specifications, acceptance of the Deliverables will take place on the date of Delivery.
- 7.5 Any use by you of the Deliverables will be deemed to be acceptance by You of the same.
- 7.6 Subject to Term 7.5, if, within five (5) Working Days of the date of Delivery (or such other time as the parties may agree in writing) (the "Acceptance Period") You provide notice in writing to TBPL that all or part of the Deliverables fail to materially comply with the Specifications (including reasonable details of such defects) TBPL will inspect the Deliverables and, if the defects are accepted by TBPL (acting reasonably) TBPL will promptly remedy such defects free of charge. In such circumstances acceptance of the Deliverables will take place on the date that such defects are remedied.
- 7.7 TBPL will not be liable for any changes to the Deliverables requested by You after the Acceptance Period and You will bear all costs which may arise as a result of such changes.

/8 ALTERATIONS

- 8.1 If at any time You wish to alter all or any part of the Specifications and/or the Timetable then You will provide TBPL with full written particulars of such alterations and with such further information as TBPL may reasonably require.
- 8.2 TBPL will then either decline to undertake such alterations or submit to You as soon as reasonably practicable a full written quotation for such alterations specifying what changes (if any) will be required to the Fee, the Timetable, the Deliverables and the Client Material.

- 8.3 Upon receipt of such quotation You will either:
- 8.3.1 accept such quotation, in which case the Specifications, the Timetable and the Fee will be deemed to be amended accordingly; or
- 8.3.2 withdraw the proposed alterations in which case the applicable Contract(s) will continue in force unchanged.
- 8.4 In the event that You do not provide written acceptance of the quotation within five (5) Working Days of receipt the Contract will continue in force unchanged.

/9 PAYMENT

- 9.1 You will pay to TBPL the Fee, the Expenses and the Additional Costs in accordance with the provisions of this Term 9.
- 9.2 You acknowledge and agree that the Estimated Fee is an approximate amount, and the Fee payable by You for the Services and Deliverables may exceed the Estimated Fee.
- 9.3 TBPL will submit to You an invoice for the Fee in accordance with the schedule set out in the Estimate or, to the extent that there is no such schedule, within thirty (30) Working Days of the end of each month.
- 9.4 TBPL will be entitled, once during each period of three (3) months from the date of the Estimate to amend any of its rates (where the Fee is calculated on a daily rate), provided that such amended rates are consistent with the standard rates charged by TBPL from time to time comparable to rates of third parties for services similar to the Services.
- 9.5 The Expenses and Additional Costs do not form part of the Fee and TBPL will submit to You a separate invoice in respect of the Expenses and Additional Costs no later than thirty (30) Working Days of the end of each month in which the Expenses and Additional Costs are incurred.
- 9.6 TBPL will be entitled, at its sole discretion, to charge You for any additional costs and expenses incurred by TBPL in the following circumstances (the "Additional Costs"):
- 9.6.1 where the method of Delivery or the Delivery Address is altered at Your request or because of health and safety reasons;
- 9.6.2 where the parties agree that TBPL will deliver the Deliverables prior to or after the dates for Delivery specified in the Timetable;
- 9.6.3 for extra hours worked as a result of Client Materials which are unclear or illegible;
- 9.6.4 (subject to TBPL's agreement) where TBPL is required by You to carry out work overtime or outside Working Days or between 6 pm and 8 am on any Working Day;
- 9.6.5 where there is a delay in the Timetable due to Your failure to deliver the Client's Materials or otherwise fully comply, perform and observe Your obligations and/or duties under and/or in relation to a Contract (to include, without limitation, those pursuant to Term 6.1). In the event that such delay is for a period of thirty (30) days or more TBPL shall be entitled to submit an invoice for the Fee and Expenses which are outstanding at that date.

- 9.7 All amounts due under a Contract are exclusive of VAT, or any similar tax, (save only for withholding tax) which will be paid at the rate and in the manner prescribed by law. In the event that any withholding tax is imposed on any amount required to be paid by You to TBPL under a Contract, You will pay such withholding tax to the appropriate tax authorities and, (provided that You forward to TBPL all required documentation under the applicable tax treaties as soon as practicable thereafter) will be entitled to deduct the amount of such withholding tax from payments required to be made by You to TBPL under a Contract
- 9.8 Unless agreed otherwise by the parties, the Fee does not include the costs incurred by TBPL prior to the date of the Estimate in relation to work carried out at Your request ("Preliminary Expenses") and TBPL will be entitled, at its sole discretion, to charge You separately for the Preliminary Expenses.
- 9.9 All amounts payable by You under a Contract will be paid no later than thirty (30) Working Days of receipt of the appropriate invoice, time being of the essence. All such payments will be made in full cleared funds and without set off or counter claim (other than any amount to be withheld by You due to a mandatory legal requirement). In addition to TBPL's other rights and remedies any payment not made on its due date will bear interest at a rate of four percent (4%) above the base rate from time to time of NatWest Bank plc, from the due date up to the date of actual payment, before and after judgement, such interest to accrue on a daily basis.

/10 PROPRIETARY RIGHTS

- 10.1 You hereby grant to TBPL a non-exclusive, royalty-free licence to use, reproduce, adapt and exploit the Client Materials for the purpose of fulfilling TBPL obligations under its Contract(s).
- 10.2 As between You and TBPL, You acknowledge and agree that all Intellectual Property Rights in the Work Products and/or Final Products are owned by TBPL and nothing in any Contract or otherwise operates to vest any rights in the Work Products and/or Final Products in You.
- 10.3 TBPL hereby grants to You with effect from the Acceptance Date a non-exclusive, non-transferable, royalty-free licence to use the Final Products solely for the purpose set out in the Specifications.

/11 LOGOS

- 11.1 In reasonable circumstances TBPL may ask you to include the TBPL Logos on all Final Products in accordance with such guidelines as TBPL may supply to You from time to time. You will co-operate for this purpose.
- 11.2 You grant to TBPL a non-exclusive, non-transferable, royalty-free licence to use the Client Logos on promotional materials. Save for the licence referred to in this Term 11.2 TBPL has no rights in the Client Logos and all goodwill and rights generated in the Client Logos will accrue to Your exclusive benefit.

/12 DURATION AND TERMINATION

- 12.1 For the avoidance of doubt, the Contract(s) in respect of an Estimate will commence from the date of signature of that Estimate by both parties and will continue in force until the Acceptance Date (the "Contract Period") unless terminated by either party in accordance with the provisions of Term 12.2 or 12.3 or 15.
- 12.2 TBPL may terminate any and all Contracts at any time on the provision of ten (10) Working Days notice in writing to You.
- 12.3 Either party may terminate any and all Contracts immediately on written notice to the other party (the "Defaulting Party"):
 - 12.3.1 if the Defaulting Party is in material breach of a Contract which material breach is incapable of remedy, or which if it is capable of remedy is not remedied after ten (10) days notice from the other party; or
 - 12.3.2 the Defaulting Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or otherwise becomes insolvent or goes into liquidation, administration, receivership or bankruptcy; or
 - 12.3.3 the Defaulting Party is wound up, dissolved or (being a natural person) dies; or
 - 12.3.4 the Defaulting Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 12.4 On the termination of a Contract howsoever caused:
 - 12.4.1 each party will settle all amounts due from one party to the other under that Contract (subject to Term 17.7);
 - 12.4.2 each party will, return all of the other party's information, data and materials in its custody, possession or control of its and/or any of its Relevant Persons;
 - 12.4.3 the accrued rights and liabilities of the parties as at termination will not be affected; and
 - 12.4.4 Terms 2.1, 2.2, 2.3, 2.4, 2.5, 2.7, 10, 11, 12.5, 14 and 15 (as well as relevant parts of Term 1 and other parts of the Terms necessary for the interpretation and/or application of the said Terms) will continue to apply to the fullest extent permitted by law.
- 12.5 In the event that a Contract is terminated by TBPL pursuant to Term 12.3, without prejudice to any other rights of TBPL under and/or in relation to that Contract, You will pay to TBPL a termination fee within ten (10) days of the date of termination which will be calculated as the sum of:
 - 12.5.1 the outstanding amount of the Fee and Expenses and Additional Costs which are due and payable at the date of termination;
 - 12.5.2 the amount equivalent to fifty (50) per cent of the remainder of the Estimated Fee; and
 - 12.5.3 any additional expenses costs and reasonably incurred by TBPL as a result of such termination.
- 12.6 The parties are fully satisfied that the termination fee under Term 12.5 is a genuine pre-estimate of TBPL's loss.

/13 WARRANTIES

- 13.1 You warrant that:
 - 13.1.1 You own and/or are licensed to use the Intellectual Property Rights in the Client Materials (and the use by TBPL of such Client Materials in accordance with the Contract will not infringe the Intellectual Property Rights of any third party);
 - 13.1.2 You have obtained and will at all times maintain all necessary registrations, authorisations, consents and licences to enable You to fulfil Your obligations under the Contract(s);
 - 13.1.3 the Client Materials will at all times be true and accurate, kept up to date and provided in an accurate, comprehensive and coherent form and will not contain any software corruptions or problems (such as, without limitation, viruses, trojans, worms, ad-ware, mal-ware or spy-ware) or anything that is libellous, defamatory or indecent or which infringes the statutory or common law or other rights of any third party and will comply with all applicable legislation from time to time;
 - 13.1.4 You will not use the Deliverables and/or Final Products in any way which is (a) not expressly set out in the Specifications and/or (b) likely to be harmful to the reputation of TBPL; and
 - 13.1.5 You will check all material prepared by TBPL under the Contract(s) prior to it being used, published or made available to the public (or otherwise in any way processed) and will promptly advise TBPL if it is contrary to any applicable law or is defamatory, inaccurate, misleading or likely to give rise to any civil claim or court order.
- 13.2 Except as expressly stated in the Terms, all other warranties, terms, conditions and undertakings, whether expressed or implied, statutory or otherwise are hereby excluded by the parties.

/14 LIMITATION OF LIABILITY

- 14.1 Nothing in this Term 14 will be construed to exclude or limit the liability of either party for fraud, death, personal injury or any other matter for which liability cannot be excluded or limited under the Law.
- 14.2 Subject to Term 14.1, TBPL's entire liability to You for all claims made under and/or in relation to any Contract howsoever arising will not exceed the total amount of the Fee payable by You to TBPL under that Contract.
- 14.3 Subject to Term 14.1, TBPL will not be liable to You under and/or in relation to a Contract (whether under statute, common law, tort of negligence or other tort, equity, contract or otherwise) for:
 - 14.3.1 any loss or damage or other detriment arising as a result of Your failure to meet Your obligations under and/or in relation to that Contract and/or any other act or omission of You and/or Your Relevant Persons; and/or
 - 14.3.2 any loss of: profit, savings, use, data, business, opportunity, contract or goodwill (in each case of a direct nature and in each case of an indirect, consequential or special nature); and/or
 - 14.3.3 any indirect, consequential or special loss or damage or other detriment howsoever caused in any case whether or not such losses were within the contemplation of the parties at the date of that Contract forming;

- 14.3.4 any loss or damage or other detriment arising because of You not taking all reasonable steps and/or implementing all reasonable measures to mitigate Your mitigatable losses, damages and other detriments; and/or
- 14.3.5 for the avoidance of doubt, any loss or damage or other detriment arising as a result of the failure to deliver the Deliverables to You in accordance with the Timetable; and/or
- 14.3.6 any loss or damage or other detriment arising in circumstances when Term 15 will apply.
- 14.4 You acknowledge that the provision of Services may involve the use of the Internet, the world wide web and other telecommunications and communications systems outside the direct control of TBPL and that no warranty or assurance may be given of their continuous availability. TBPL will not be liable for any transmission error or technical failure (including but not limited to Internet, the world wide web and other telecommunications and computer systems failure) outside the control of TBPL or any consequences thereof.
- 14.5 You acknowledge and agree that if You consider that TBPL is not, or may not, be complying with any of its obligations, You will only be entitled to rely on this as relieving Your performance under any and all Contract(s):
- 14.5.1 to the extent that non-compliance by TBPL restricts or precludes performance of the ordered Services or delivery of the ordered Deliverables to You; and
- 14.5.2 if You (promptly after the actual or potential non-compliance has come to Your attention) have notified sufficiently full and accurate details to TBPL in writing for TBPL to identify the issues involved and resolve them; and
- 14.5.3 TBPL does not resolve the issues to Your reasonable satisfaction (acting in good faith) within a reasonable period.

/15 FORCE MAJEURE

TBPL will not be in breach of any of its obligations under the Contract if prevented from carrying them out due to circumstances beyond its reasonable control (including, without limitation, act of god, accident, fire, strike, failure of technical facilities or personnel, failure of suppliers, death or other cause not reasonably within its control) and will be excused from the performance of such obligations for so long as such circumstances will continue, provided that if such circumstances will continue for a period in excess of thirty (30) days then either party will be entitled in its discretion to terminate the Contract(s) on giving notice to the other party.

/16 NOTICES

- 16.1 Any notice will be in writing and will be served by hand delivery or sending it by prepaid recorded or special delivery post or prepaid international recorded air mail or sent by fax to the relevant party's address as set out on the Estimate or at such other address as may be notified in writing by either party from time to time.
- 16.2 Any notice pursuant to Term 16.1 will be deemed to have been served:
- 16.2.1 if hand delivered or sent by prepaid recorded or special delivery post or prepaid international recorded airmail, at the time of delivery;
- 16.2.2 if sent by post (other than prepaid, recorded, special delivery post or prepaid recorded international airmail), two (2) days from the date of posting if posted to an address within the country of posting and seven (7) days of posting if posted to an address outside the country of posting; and
- 16.2.3 if sent by fax, at the time of transmission.
- 16.3 Any such change to the place of service will take effect five (5) Working Days after notice of the change is received or (if later) on the date (if any) specified in the notice as the date on which the change is to take place.

/17 GENERAL POINTS

- 17.1 English law will govern each Contract in all respects and (unless TBPL expressly states otherwise in writing for enforcement reasons) the courts of England and Wales will have exclusive jurisdiction to deal with any and all litigation and other such court action whatsoever concerning each Contract.
- 17.2 TBPL may assign any of its rights or sub-contract/ delegate any of its duties/obligations under any Contract(s). You may assign Your rights or sub-contract/ delegate Your duties/obligations under any Contract(s) with the express prior written consent of TBPL. You will act in good faith and reasonably in considering and responding to any request from TBPL to novate any Contract(s).
- 17.3 Each Contract is not intended to benefit, or be enforceable by, anyone other than TBPL and You under the Contract (Rights of Third Parties) Act 1999 or otherwise (except that any Relevant Person of TBPL is entitled to enforce any benefit given to it by the Terms).
- 17.4 A waiver of any right under a Contract is only effective if it is in writing. Any such waiver will apply only to the circumstances for which it is given.
- 17.5 The Terms, Special Conditions and Estimate are to apply to the fullest extent permitted by the law. If any aspect of a Contract is held/determined to be unenforceable by any court/body of competent jurisdiction, that aspect will be deemed modified (or, as a last resort, deleted) to the minimum extent necessary for it to become enforceable. The remainder of that Contract will continue to apply in any event.
- 17.6 Nothing in the Terms, the Special Conditions, the Estimate or a Contract as a whole or in any other document or dealing will be interpreted as deeming one party the partner, joint venturer, agent or representative of the other in respect of that Contract.
- 17.7 TBPL may (without prejudice to any other rights or remedies it may have) set off any of its liability to You against any of Your liability to TBPL. The reverse does not apply (unless, subject to Term 2.2, TBPL and You especially agree otherwise in writing).
- 17.8 The expressions including, include, in particular or any similar expression will not limit the sense of the words appearing before them.
- 17.9 The headings and any sub-headings are not intended (and will not be deemed) to affect interpretation of the Terms.
- 17.10 Singular words include the plural. The reverse also applies. A reference to one gender includes all other genders.

- 17.11 A 'person' includes a natural person, body corporate or unincorporated body (whether or not having separate legal personality).
- 17.12 Any obligation on a person not to do anything includes an obligation not to agree, suffer, allow, permit or acquiesce in that thing being done by another person.
- 17.13 A reference to any statute or statutory provision includes all subordinate legislation made under it and is a reference to it (including the subordinate legislation) in force from time to time (taking into account all amendments, re-enactments, re-statements, consolidations and repeals).
- 17.14 If the client of TBPL under a Contract is comprised of more than one person, the responsibility and liability under and/or in relation to that Contract of all such persons will be joint and several.

/GLOSSARY

“Acceptance Date”

- has the meaning given to it by Term 7.4, 7.5 or 7.6 as the case may be.

“Acceptance Period”

- has the meaning given to it in Term 7.6.

“Additional Costs”

- has the meaning given to it by Term 9.6.

“Bespoke Software”

- the software, applications and databases developed by TBPL specifically for you which substantially provide the functionality of the Website as described in the Specifications.

“CAR” or “Client’s Authorised Representative”

- has the meaning given to it by Term 6.4.

“Client Logos”

- all trade marks, whether registered, unregistered or subject to an application for registration, business or trade names, get up and logos owned by or licensed to you and used by you in the course of its business.

“Client Materials”

- any materials in whatever form supplied by or on behalf of you to TBPL including, without limitation, the materials listed in the Estimate and such other materials as the parties may agree from time to time.

“Contract”

- any legally binding agreement, understanding, arrangement or commitment for the supply of particular Services to You by TBPL.

“Contract Period”

- has the meaning given to it by Term 12.1.

“Defaulting Party”

- has the meaning given to it by Term 12.3.

“Deliverables”

- in respect of a Contract, the materials (including, without limitation, text, audio, audio-visual and/or graphic materials) described in the Specifications for that Contract.

“Delivery”

- has the meaning given to it by Term 7.2.

“Delivery Address”

- the address specified in the Estimate or as otherwise agreed by the parties in writing.

“Detriments”

- any and all losses, damages, costs, charges, fees, penalties, litigation, disputes and similar actions and detriments.

“Document”

- includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

“Estimate”

- in respect of a Contract, the written quotation for the supply of Services and Deliverables signed by both parties.

“Estimated Fee”

- in respect of a Contract the estimate for the Fee payable by you for Services specified in the Estimate for that Contract.

“Expenses”

- any expenses in addition to the Fee which are reasonably incurred by TBPL in the provision of Services, including, without limitation, costs of photography, print, reproduction and delivery.

“Fee”

- the amount payable by you to TBPL, as determined in accordance with the Estimate.

“Final Product”

- the final form of the Deliverables as accepted by You pursuant to Term 7.

“Intellectual Property Rights”

- all patents, rights to inventions, utility models; copyright and related rights; trade marks, service marks, trade names, business names and domain names; rights in trade dress or get-up; rights in goodwill or to sue for passing off; unfair competition rights; rights in designs; rights in computer software; database rights; topography rights; moral rights; rights in Confidential Information (including know-how and trade secrets); and any other intellectual property rights whatsoever, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“Parent Undertaking”

- means a parent undertaking as defined in section 1162 of the Companies Act 2006.

“Preliminary Expenses”

- has the meaning given to it by Term 9.8.

“Print Deliverables”

- materials which are printed and/or reproduced by third parties pursuant to instructions from TBPL, as further described in the Specifications.

“Print Services” - the services involved in the procurement of printing and reproduction services for the purpose of producing the Print Deliverables.

“Relevant Persons”

- in respect of a person, any of the following:

- that person’s Parent Undertaking or Subsidiary Undertaking;
- any other Subsidiary Undertaking of such Parent Undertaking;
- any of that person’s sub-contractors or suppliers;
- any partner, member, director or other officer, employee, non-employed worker, agent or representative of any of the above.

“Services”

- in respect of a Contract the development and supply of the Deliverables and the provision of the services specified in the Estimate for that Contract.

“Software”

- the Bespoke Software, the TBPL Software and the Third Party Software.

“Special Conditions”

- the special terms and conditions of purchase (if any) that are specified in writing by virtue of step 2 under Term 3.2.

“Specifications”

- the requirements for the Deliverables (including, without limitation, the purpose for which the Deliverables are requested) and/or the Services as set out in the Estimate.

“Subsidiary Undertaking”

- a subsidiary undertaking as defined in section 1162 of the Companies Act 2006.

“TBPL”

- Thompson Brand Partners Ltd (company number 3745303).

“TBPL Clearances”

- has the meaning given to it by Term 5.2.

“TBPL Logos”

- the mark **“Thompson Brand Partners Ltd”** and such other trade marks whether registered, unregistered or subject to an application for registration, business or trade names, logos and get up used by TBPL from time to time.

“TBPL Software”

- the software to be included in the Website which is owned by TBPL but not including the Bespoke Software.

“TBPL Website”

- has the meaning given to it in Term 5.8.10(a).

“Terms”

- has the meaning given to it in Term 1.

“Third Party Software”

- software to be included in the Website which is licensed to TBPL by a third party.

“Timetable”

- in respect of the Contract, the timetable for provision of Services, as set out in the Estimate, or such other timetable as the parties may agree in writing from time to time for that Contract.

“VAT”

- value added tax chargeable under English law for the time being and any similar additional tax.

“Website”

- the website on the world wide web/internet developed by TBPL for you which provides the functionality set out in the Specification.

“Website Acceptance Period”

- has the meaning given to it in Term 5.8.1.

“Website Design Services”

- the services involved in the design and development of a website.

“Work Products”

- all materials and inventions created and/or developed by TBPL in the course of carrying out its business including, without limitation, all proofs, visualisations, layouts, designs, concepts, proposals, logos, designs, software and specifications (including without limitation those which are rejected by you) but not including the Final Products.

“Working Day”

- any day which is not a Saturday, Sunday or public or bank holiday in England.

“You” or “Your”

- in respect of a Contract, the supplier of TBPL under that Contract.