

# Standard Terms and Conditions

## 1. Definitions

In these conditions:

**"Agreement"** means these terms and conditions together with the Order Confirmation.

**"Client"** and **"You / Your"** means the company, firm, person, persons, corporation or public authority using any of the Company's services and includes their successors or personal representatives.

**"Company"** means Alliance Creative Limited, a company incorporated in Scotland with company number SC400097 and having its registered office at 22 Stafford Street, Edinburgh, EH3 7BD.

**"the Contract Price"** means the price for the Services as set out in the Order Confirmation or otherwise agreed between the parties in writing.

**"Deliverables"** means all works, materials and products developed by the Company in relation to the Services in any media including without limitation computer programs, designs, data, diagrams, drawings, brochures, artwork and specifications.

**"Document"** means 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.

**"Hosting Services"** means the provision of hosting, server(s), and file maintenance for one or more websites.

**"Input Materials"** means any Documents, data, drafts, concepts, text, graphics, logos, photographs, images, moving images, sound, illustrations, prototypes and other materials in the correct format other information provided by the Client relating to the Services.

**"Instruction"** means the order from the Client for the Services.

**"Intellectual Property"** means any patent, invention, copyright, database right, registered or unregistered design, trademark (whether registered or unregistered), trade name, logo, trade secrets, know-how or other industrial or intellectual property right subsisting anywhere in the world, and applications for any of the foregoing, together with the goodwill thereon.

**"Order Confirmation"** means the document sent to the Client by the Company following receipt of the Client's Instruction, which confirms or clarifies the key details of Instruction.

**"Products"** means all website content management systems, interfaces, navigational devices, menus, menu structures or arrangements, icons, help, all operational instructions, scripts, CGI applications, software, programming/source code, and all other components of any source or object computer code, all literal and non-literal expressions of ideas that operate, cause, create, direct, manipulate, access, or otherwise affect the content and design elements used or developed and all software, products and results comprised in Deliverables.

**"Retention Period"** means the period (if any) specified by the Customer for which particular Personal Data should be retained by the Company before being destroyed or turned to the Client.

**"Retention Purpose"** means the reason(s) why particular Personal Data processed by the Company on behalf of the Client should be retained by the Company for the Retention Period.

**"Services"** means the work undertaken or service provided by the Company as set out in the Order Confirmation.

**"Works"** means all information, methods, techniques, inventions, processes, reports, drawings, domain names, plans, research, know-how, systems, software, confidential information, creative works, concepts or other works or material produced, developed or discovered by the Company (either alone or with others and including without prejudice to the foregoing generality all, Deliverables Documents and Reports) relating to the business of the Client or pertaining to, resulting from or suggested by the work the Company undertakes for the Client, during the term of this Agreement.

**"Writing"** means any written paper document, any fax, and any email correspondence.

## 2. Conditions

- 2.1 Unless otherwise stated in writing, all orders are accepted subject to these terms and conditions as stated herein and the Client by authorising or allowing work to proceed is deemed to have acknowledged this fact.
- 2.2 No contract shall exist until the Order Confirmation has been issued by the Company.
- 2.3 These terms and conditions should be read together with the Order Confirmation. If there is any conflict between the Order Confirmation and these terms and conditions, the provisions of the Order Confirmation shall prevail.
- 2.4 No variation to these terms and conditions shall be binding unless agreed in writing to between the authorised representatives of the Company and the Client.
- 2.5 The Company's employees, agents or sub-contractors are not authorised to make any representations concerning the Instruction or any other aspect of this Agreement unless such authority is confirmed by the Company in advance in writing. In entering into the Agreement, the Client acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.

## 3. Changes and Delays

- 3.1 Should the Client decide that changes are required after an Order Confirmation has been issued by the Company, then the Company shall wherever reasonably possible (at the Company's discretion) accept these changes subject to agreement by the Client to any changes to the Contract Price, date(s) of performance or other aspects of the Instruction which may arise from such changes.
- 3.2 If delivery of the Services is impeded or delayed by the Client, his contractors or third parties so as to change the scope or duration of the Services, the Company shall advise the Client of the effects including any increase in the Contract Price and the Agreement shall be modified to reflect such changes.
- 3.3 The Contract Price has been prepared on the basis of project continuity being maintained. The Company reserves the rights to increase the Contract Price to take account of any additional costs caused by delays requested or caused by the Client.

## 4. Client Obligations

- 4.1 The Client acknowledges that the Company's ability to provide the Services is dependent upon the full and prompt co-operation of the Client (which the Client agrees to provide) as well as the accuracy and completeness of Input Materials. Accordingly, the Client shall in a timely manner provide the Company with access to, and use of, Input Materials and all other information, data and documentation reasonably required by the Company for the performance by the Company of its obligations under this Agreement.
- 4.2 The Client shall at its own expense retain duplicate copies of all Input Materials and insure the same against its accidental loss or damage. The Company shall have no liability for any such loss or damage, howsoever caused.
- 4.3 The Client shall be obliged to accept Deliverables if they accord in all material respects with the applicable Statement of Work. The Client shall notify the Company in writing within 3 working days if any Deliverable does not comply with the applicable Statement of Work, with sufficient detail to allow the Company to identify with clarity any objection, correction, change or amendment required, and the Client shall permit the Company a reasonable opportunity to replace or re-perform the relevant Deliverable.
- 4.4 If the Client does not notify the Company of any non-compliance within 3 working days as required under Condition 4.3 above, the Client shall not be entitled to reject the applicable Deliverable and shall be bound to pay the Contract Price as if the Deliverable have been delivered in accordance with the Agreement.
- 4.5 The Company is under a duty to ensure that any materials produced under the Agreement are legal, decent, honest and truthful. However the Company may not be an expert in respect of the subject matter of the Deliverables content and therefore the Client is responsible for the accuracy, completeness and for all descriptive, technical or proprietary aspects of the Deliverables and shall indemnify the Company in respect of any claims, costs and expenses arising out of any defamatory matter or any infringement of copyright, patent, design of or any other proprietary or personal rights contained in any Deliverables produced for the Client.
- 4.6 The Company shall not be required to print any matter which in its opinion is or may be of an illegal or defamatory nature or an infringement of the proprietary or other rights or any third party. The Client agrees to notify the Company promptly if the Client believes that any statement made in any Document included in Deliverables submitted to the Client for Approval is incorrect or misleading in any way, or may give rise to any action for defamation or otherwise against the Company.
- 4.7 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client or any of its officers, employees, agents or sub-Contractors (including but not limited to delay or failure to supply Approval in regard to draft Deliverables), the Company shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 4.8 The Client will be responsible for obtaining and holding all consents, licences, permits and other similar instruments applicable to material it supplies to the Company for incorporation into the Deliverables and the Works including without limitation copyrights, trademarks, logos, patents and all such similar instruments.

- 4.9 Whilst the Company will have responsibility for font subscriptions and purchases in respect of Works originated by the Company, without limiting the generality of clause 4.9 the Client will be responsible for procuring any font licenses for content not originated by the Company, such as server licences and desktop licences for in-house designers.
- 4.10 It is the Client's responsibility to backup any data (including Personal Data in terms of clause 17) supplied to the Company as the Company does carry out backups unless this is specifically included in the Services and set out in the Agreement.

## 5. Company's Duties

- 5.1 the Company shall exercise all reasonable skill, care and diligence in the performance of the Services, in accordance with the standards of a qualified and competent Company experienced in carrying out work of a similar scope and complexity to the Services.
- 5.2 The Company shall use reasonable endeavours to provide the Services in accordance in all material respects with the Client's Instruction and the Order Confirmation (where applicable). Any time or times for the provision of the Services shall be an estimate only and except as regards Clause 6 below, time shall not be of the essence of the Agreement.

## 6. Payment

- 6.1 The Company shall invoice the Client for Services as specified in the Order Confirmation. Payment must be made in full within 7 days of receipt of the Company's invoice. Time of payment shall be of the essence in the Agreement.
- 6.2 An advance payment may be required, and this will be identified in the Order Confirmation. The advance payment invoice will be sent to the Client with the Order Confirmation. Work will commence upon receipt by the Company of the Client's payment in respect of said advance payment invoice.
- 6.3 If the Client fails to make payment within the period specified in clause 6.1 then, without prejudice to any other right or remedy available to us, the Company shall be entitled to:
  - 6.3.1 suspend performance of the Services; and/or
  - 6.3.2 cancel the Agreement; and/or
  - 6.3.3 charge the Client interest on the amount unpaid, at the rate of 4 per cent per annum above the base rate from time to time of the Royal Bank of Scotland plc, calculated on a daily basis, until payment is made.
- 6.4. The Company shall be entitled to be reimbursed by the Client for all out-of-pocket expenses wholly, exclusively and properly incurred in the performance of the Services subject to the Company providing the Client with vouchers, receipts or other evidence of actual payment of such expenses and subject to the arrangement being specifically agreed in advance by the Client to the Company.
- 6.5 The Client shall not be entitled by reason of any set-off, counter-claim, abatement, or other deduction to withhold payment of any amount due.

6.6 Title in any Deliverables shall remain with the Company until full payment has been received. Until all sums owed by the Client to the Company arising from any goods or services supplied under this Agreement is paid in full by the Client to the Company, the property in the Deliverables including the Company copyright (if any) shall remain in the Company and the following conditions shall apply:

- 6.6.1 the Client (if the Company so requires) shall hold the Deliverables on the Company's behalf and shall store it in such a way that it is clearly the property of the Company; and
- 6.6.2 the Client hereby grants to the Company the right to enter upon the Client's land or buildings and agrees to procure a right of entry into anywhere else where the Services is stored, for purposes of repossessing the Deliverables.

## 7. Termination

7.1 A party ('the Initiating Party') may terminate this Agreement with immediate effect by written notice to the other party ('the Breaching Party') on or at any time after the occurrence of one or more of the following events:

- 7.1.1 the Breaching Party committing a material breach of this agreement and failing to remedy the breach within 30 days starting on the day after receipt of notice from the Initiating Party giving details of the breach and requiring the Breaching Party to remedy it;
- 7.1.2 the Breaching Party passing a resolution for winding up, a court of competent jurisdiction making an order for the Breaching Party's winding up or the presentation of a petition for the Breaching Party's winding up that is not dismissed within seven days, in each case other than for the purposes of solvent amalgamation or reconstruction in such manner that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the Breaching Party's obligations under this agreement;
- 7.1.3 the making of an administration order in relation to the Breaching Party or the appointment of a receiver over, or an encumbrancer taking possession of or selling any asset of, the Breaching Party;

Or

- 7.1.4 the Breaching Party making an arrangement or composition with his creditors generally or making an application to a court of competent jurisdiction for protection from his creditors generally.

7.2 Where the Order Confirmation stipulates that the Agreement is for the provision of the Services over a period of time, with the exception of Hosting Services the Agreement may be terminated by either party giving to the other one month's written notice PROVIDED ALWAYS that if the Client terminates the Agreement, it shall:

- 7.2.1 pay immediately all outstanding sums due to the Company;
- 7.2.2 be responsible for all costs and expenses incurred by the Company in respect of any uncompleted Services and be liable for one month's fees, whether or not activity is required from the Company for the Client during this period;
- 7.2.3 accept and pay invoices from the Company in respect of any Services completed or partly completed;

7.2.4 discharge any liability of the Company to third parties incurred in relation to any Services originally envisaged pursuant to the Client's initial Instruction.

7.3 Clauses 7.2 and 7.2.1 - 7.2.4 inclusive shall apply to Hosting Services except that the period of written notice shall be three months.

7.4 On termination of the Agreement for any reason the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

## 8. No Waiver

Failure or delay by either party in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement. Any waiver by a party of any breach of, or any default under, any provision of the Agreement by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.

## 9. Force Majeure

- 9.1 The Company shall not be liable for any delay or failure to perform any of its obligations under this Agreement if delay or failure results from events or matters beyond its reasonable control, including but not limited to, acts of God, fire, lightning, explosion, war, disorder, accidents, flood, industrial dispute (whether or not involving its employees), failures or interruptions of electricity supplies, weather of exceptional severity, acts or omissions of local or central government or other authorities, the acts or omissions of any internet service provider, or the delay or failure in manufacture, production or supply by third parties of equipment or services, and it shall be entitled to a reasonable extension of its obligations after notifying the Client of the nature and extent of such events.
- 9.2 In the event of suspension variation or cancellation for any of the foregoing reasons or for any other reason beyond the Company's control the Company shall be entitled to be paid the full Contract Price for the Services completed up until the time at which any such suspension, variation or cancellation occurs together with any other monies due and owing by the Client to the Company.

## 10. Severability

If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.

## 11. Disputes

Satisfaction with the quality of the Services provided is of paramount importance to us. If at any time you would like to discuss with us how our service to you could be improved, or if you are dissatisfied with the service you are receiving, please let us know, by emailing [hello@alliancecreative.co.uk](mailto:hello@alliancecreative.co.uk). We undertake to look into any issue carefully and promptly and to do all we can to explain the position to you. If you feel that we have given you a less than satisfactory service, we undertake to do everything reasonable to address your concerns. Should matters not be resolved to your satisfaction and any dispute arise in connection with the Agreement parties shall attempt to settle it by Mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

## 12. Confidentiality and Publicity

- 12.1 the Company and the Client shall keep confidential all information of the other party, whether designated as confidential or not, obtained under or in connection with the Agreement and shall not divulge the same to any third party without the written consent of the other party. The provisions of this clause shall not apply to any information in the public domain otherwise than by breach of the Agreement; or information obtained from a third party who is free to divulge the same.
- 12.2 The Company may refer to the Agreement or to the fact that the Client is the Company's Client with the prior consent of the Client which shall not be unreasonably withheld.
- 12.3 The Client agrees that the Company may use samples of the Deliverables produced pursuant to the Agreement for promotional activities, client lists, website & social media.
- 12.4 All media releases and public announcements by either party relating to these Terms of Business or its subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved jointly by the party prior to release.

## 13. Intellectual Property

- 13.1 All Input Materials shall remain the sole property of the Client or its respective suppliers and the Client or its suppliers shall be the sole owner of all rights in connection therewith. The Client hereby grants to the Company a nonexclusive, non-transferable licence to use, reproduce, modify, display and publish the Input Materials solely in connection with the Services.
- 13.2 All third party-owned materials are the exclusive property of their respective owners. The Company shall inform the Client of all third-party materials which may be required in connection with the Services and the Client shall at its expense obtain any licences in respect of copyright or other intellectual property rights and any other releases or permissions which are required for all such third party-owned materials.
- 13.3 All preliminary or sample materials and original artwork which has been provided by the Company prior to or in the course of the project remains the exclusive property of the Company, which retains all intellectual property rights therein. Such preliminary or sample materials shall be returned to the Company and all digital copies or representations thereof shall be destroyed by the Client within thirty days of completion of the project.
- 13.4 Unless otherwise agreed in writing, all Products remain the property of the Company who shall retain full ownership rights and all intellectual property rights. The Client specifically agrees not to crop, distort, manipulate, reconfigure, create derivative works or extract portions or in any other manner alter the design and code without prior written permission from the Company, nor to do anything that may in any way infringe upon or undermine the Company's rights, title, or interest in the Products, which includes, but is not limited to, any sale, transfer or gift of the whole or of any part of any item, data or anything whatsoever owned by the Company. The Client accepts that the Company may reproduce, reuse, develop and use in any other way, anything within the Company's ownership.

- 13.5 Copyright and other intellectual property rights in the Deliverables shall remain vested in the Company unless otherwise agreed on writing. Upon written confirmation by the Company that final payment in terms of the Agreement has been received the Company shall assign to the Client all ownership rights, including any copyrights, in and to the Deliverables. The Company shall cooperate with the Client and shall execute any additional documents reasonably requested by the Client to evidence such assignment. The Client shall have sole responsibility for ensuring that any artwork or designs intended to be a Trademark are available for use and registration and do not otherwise infringe the rights of any third party. The Client hereby indemnifies and holds harmless the Company from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand or action by any third party alleging any infringement arising out of the Client's use and/or failure to obtain rights to use or use of the Trademark.
- 13.6 No rights as described in sub-clause 13.5 above will pass to the Client until all amounts due to the Company have been paid. Should final payment not be made in full within two months from the date of the relative invoice(s) the Client agrees and accepts that it will forfeit its rights in terms of this Agreement.

## 14. Withdrawal of Stock Material

Third-party providers of stock images, videos or music reserve the right to withdraw licensed material such as stock images, videos or music where release issues arise after publication. For example, but not limited to, when the third-party provider may be liable to a claim of infringement of another's rights, the provider may require the Licensee to immediately and at its own expense i) stop using the licensed material; ii) delete or remove the licensed material from its premises, computer systems and storage whether electronic or physical; and iii) ensure that its Clients do likewise. On such occasion, where the Company is the Licensee, costs and comparable replacement will be the responsibility of the Company. On such occasion where the Client is the Licensee, costs and comparable replacement will be the responsibility of the Client. If the third party offers a comparable replacement, this.

will be provided free of charge but all design, artwork charges and any subsequent print and/or production costs will be the responsibility of the Client.

## 15. Indemnity

- 15.1 The Client warrants that to the best of its knowledge, information and belief all information supplied to the Company before, during and after the Agreement is and shall be accurate and not in any way illegal and that it is entitled to provide such information to the Company without recourse to any third party. The Client hereby indemnifies and holds harmless the Company against all claims, demands, losses, damages, costs or expenses (including legal costs and expenses) and liability whether civil or criminal which the Company may incur or suffer as a result of any act, neglect or default of the Client or its agents, employees or licensees, or the infringement of the Intellectual Property rights of any third party, or any successful claim for defamation, provided that such liability was not incurred by the Company through any default in performing its obligations under the Agreement.

- 15.2 The Company warrants that to the best of its knowledge and belief the Deliverables shall not infringe any third-party rights. Subject to the provisions of this Clause, the Company shall indemnify the Client from and against any and all damage, loss, costs, expenses (including legal costs and expenses) and liability whether civil or criminal which the Client may incur or suffer as a result of any breach of this Agreement by the Company, including breaches resulting in any successful claim by any third party alleging defamation, provided that:
- 15.2.1 any condition or warranty which might otherwise be implied into or incorporated in the Agreement, whether by statute, common law or otherwise, is expressly excluded from the Agreement to the maximum extent permitted by law;
- 15.2.2 the Company's maximum aggregate liability to the Client under the Agreement shall in no circumstances exceed an amount equal to the Company's professional indemnity insurance cover, which the Company shall disclose to the Client at any time upon request;
- 15.2.3 the Company being notified in writing promptly of the occurrence of any event that may give rise to a claim under this Clause;
- 15.2.4 the Company having the exclusive conduct of the defence of such claim and all negotiations for its settlement or compromise;
- 15.2.5 the Client (at the reasonable expense of the Company) co-operating, as the Company may reasonably request in the defence or settlement of the claim;
- 15.2.6 the Client not making any prejudicial statements; and
- 15.2.7 the Client mitigating its loss.
- 15.3 The provisions of this Clause 15 shall survive the expiry or termination of the Agreement.

## 16. Liability

- 16.1 Notwithstanding any other provision in this agreement, the Company's liability to the Client for death or injury resulting from his own negligence or that of his employees, agents or sub-contractors shall not be limited.
- 16.2 The Company's entire liability to the Client in respect of any breach of our contractual obligations, any breach of warranty, any representation, statement or delictual act or omission including negligence arising under or in connection with this Agreement shall be limited to an amount equal to the Contract Price.
- 16.3 The Company shall not be liable to the Client for any indirect or consequential loss the Client may suffer, even if the loss is reasonably foreseeable or the Company has been advised of the possibility of the Client incurring it.
- 16.4 The Company shall not be liable for any loss, costs or damage howsoever arising from the failure of any third party to fulfil its obligations to the Client under any agreement between the Client and such third party.
- 16.5 Without prejudice to the foregoing generalities, the Company will not be held responsible for any losses arising from the supply by the Client or others of incorrect or incomplete information, or the Client's or others' failure to supply any appropriate information or your failure to act on our advice or respond promptly to communications from us or other relevant authorities.
- 16.6 If the provision of Services by the Company under this Agreement includes Deliverables requiring the use of websites, plugins, applications, content management systems, API's or other resources provided by third party providers, the Company will not be responsible for any downtime, hacking or cyber-attacks, interruptions, loss of service or any other events or circumstances involving such third party resources and shall have no liability for any loss or damage resulting therefrom.
- 16.7 With regard to Deliverables which incorporate third party websites and related services and components:
- 16.7.1 The Company shall endeavour to ensure that all Deliverables function correctly when delivered to the Client. In particular the Client can expect that:
- 16.7.1.1 Websites will function properly when viewed with the latest versions of the main browsers at the time of publishing live;
- 16.7.1.2 Websites and other solutions will reflect the most up-to-date versions of third-party plugins, applications and API's; and
- 16.7.1.3 Content management systems will contain the latest security patch and version updates, however, in the event that a project extends beyond a two-month period or there is a delay from the proposed publishing live date, the Company cannot guarantee that the content management system will be the latest version.
- 16.7.2 However the Client accepts that third party websites and related services and components included in Deliverables will be subject to version changes, patches and updates (together "Updates") and that for Deliverables to continue to function following delivery by the Company, Updates will be required on an ongoing basis and unless otherwise agreed, the Client shall have sole responsibility for ensuring that all applicable Updates are implemented. The Company shall have no liability for loss of or depreciation in functionality or for any other consequence of any failure by the Client to implement Updates.
- 16.8 The Client shall be liable to pay to the Company on demand all reasonable costs, charges and losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Agreement.
- 16.9 The limitations and exclusions of liability in these Terms and Conditions shall survive termination of the Agreement.

## 17. Data Protection

- 17.1 For the purposes of this clause 17, "Data Protection Laws" means all applicable laws in relation to (a) data protection; (b) privacy; (c) interception and monitoring of communications; (d) restrictions on or requirements relating to the Processing of Personal Data of any kind including laws addressing identity theft or security breach; "Data Controller", "Data Processor", "Data Protection Commissioner", "Data Subject" "Personal Data" and "Processing" shall each have the meaning set out in the UK Data Protection Acts.

- 17.2 Both parties shall observe all their obligations under the Data Protection Laws which arise out of or in connection with this Agreement, including but not limited to the provision or use of the Services.
- 17.3 The Company acknowledges that, in the course of the provision of the Services it may have access to and may be required to process data comprising Personal Data for and on behalf of the Client. It is the responsibility of the Client to ensure that the Personal Data provided to the Company is adequate, relevant and limited to what is necessary for Processing for the purpose of delivering the Services ("the Purpose"). Any Personal Data provided to the Company, which is deemed to be inadequate, not relevant or not necessary for the Purpose will be deleted and the Client informed accordingly.
- 17.4 The Company shall only process such Personal Data in accordance with the instructions and authorisations of the Client and solely as strictly necessary for the performance of its obligations under this Agreement.
- 17.5 The Company shall take appropriate technical and organisational security measures in respect of such Personal Data (including against the unauthorised or unlawful processing, access or disclosure of the Personal Data and against accidental loss or destruction of, or damage to the Personal Data).
- 17.6 Without prejudice to any other right or remedy the Company may have, the Company shall inform the Client forthwith (and in any event within 24 hours of becoming aware of the event) in writing upon becoming aware of any unauthorised or unlawful processing of such Personal Data and/or accidental loss or destruction of, or damage to such Personal Data (a "Data Breach") or suspected Data Breach. In the event of a Data Breach arising from the Company's failure to comply with the provisions of this clause 16, the Company shall upon request:
- 17.6.1 provide such information relating to the event as the Client may reasonably require; and
- 17.6.2 use all reasonable endeavours to take such corrective and other reasonable action as the Client may require in relation to the event.
- 17.7 The Company agrees it will not transfer the whole or any part of such Personal Data outside the United Kingdom or the European Economic Area.
- 17.8 The Company shall promptly notify the Client if:
- 17.8.1 it receives an access, modification or erasure request from a Data Subject in relation to such Personal Data; or
- 17.8.2 it receives any communication or notification from the Data Protection Commissioner or from any third party in relation to such Personal Data.
- 17.9 The Company shall destroy the Personal Data either i) once it has been used for the Purpose and is no longer required or ii) in accordance with a written instruction from the Client which specifies a Retention Period and Retention Purpose for that Personal Data.
- 17.10 The Client shall be entitled to inspect and scrutinise the Company's processing premises, facilities, procedures and documentation in order to ascertain its compliance with this clause 17.
- 17.11 The Company warrants and represents that it shall not subcontract or outsource any aspects of the Services as they relate to data protection and/or Personal Data without:
- 17.11.1 the prior written consent of the Client; and
- 17.11.2 ensuring that the subcontractor or outsource supplier enters into a legally binding agreement with the Company requiring that the subcontractor abide by terms for the protection of Personal Data not less protective than those in this Agreement. The Company shall provide the Client with a copy or summary of such terms upon request and the Company shall be fully liable for the acts and omissions of any subcontractor to the same extent as if the acts or omissions were performed by the Company.
- 17.12 The Client shall be entitled to terminate this Agreement forthwith by notice in writing to us if the Company is in material or persistent breach of this clause 17.
- 17.13 On termination of this Agreement, the Company shall forthwith deliver to the Client or destroy, at the Client's sole option, all Personal Data in its possession or under its control.

## 18. Remedies

The rights and remedies provided for by this agreement are cumulative with and not exclusive of any rights or remedies provided by law.

## 19. Assignment

The Client shall not assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this Agreement in whole or in part without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. The Company may subcontract, assign or transfer our obligations or rights to a competent third party or to any associated company whether in whole or in part.

## 20. Entire Agreement

These terms and conditions together with the Order Confirmation set out the entire understanding of the parties with respect to their subject matter and replace any prior agreements or understandings or representations (unless fraudulent), whether written or oral.

## 21. Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Scotland the courts of which shall have non-exclusive jurisdiction.