

11/02/2022



marmalade london

Contents

1	Interpretation	3
2	Commencement and Duration	6
3	Proposals	6
4	Marmalade's Obligations	6
5	Client's Obligations	7
6	Non-Solicitation and Employment	7
7	Changes	8
8	Acceptance, Objection and Remediation	8
9	Fees and Payment	8
10	Intellectual Property Rights	9
11	Indemnification and Liability	11
12	Data Protection	12
13	Confidentiality	12
14	Limitation of Liability	13
15	Termination	14
16	Obligations on Termination and Survival	15
17	Force Majeure	15
18	Multi-Tiered Dispute Resolution Procedure	16
19	General	17

Standard Terms of Business

Marmalade London Limited incorporated and registered in England and Wales with company number 03784283 whose registered office is at 6th Floor Charlotte Building, 17 Gresse Street, London, United Kingdom, W1T 1QL (“Marmalade”).

AGREED TERMS

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Acceptance: means acceptance or deemed acceptance of the Deliverables by the Client pursuant to clause 8.

Acceptance Criteria: means the criteria to be met as set out in the relevant Proposal.

Acceptance Test: means the test designed to evaluate compliance of a Site with a Proposal, as set out in a Proposal.

Available Services: means design services, design and project management services, event management services and website design services in each case as described further in the applicable Proposal.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.30 am to 5.30pm GMT on any Business Day.

Commencement Date: the date on which this Agreement commences as set out in the Cover Sheet.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and controls, controlled and the expression change of control shall be construed accordingly.

Client: as set out on the Cover Sheet.

Client's Equipment: any software, equipment, including tools, systems, cabling or facilities, provided by the Client, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Proposal.

Client Materials: all documents, information, items, materials factual, promotional or other advertising claims, photography, writing and other creative content in any form, whether owned by the Client or a Third Party, which are provided or required by the Client for inclusion in the Works.

Data Protection Law: means the Data Protection Act 2018, the UK GDPR (as defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019), any other applicable UK law concerning data protection, privacy or confidentiality and any subordinate or related legislation in the UK.

Deliverables: any output of the Works to be provided by Marmalade to the Client as specified in a Proposal.

Design Agents: any Third Party acting for and on behalf of Marmalade for the purpose of delivering the Works.

Designer Tools: means all design tools developed and/or used by Marmalade in providing the Works, including without limitation pre-existing and newly developed software including source code, web authoring tools, type fonts, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as website design, architecture, layout, navigational and functional elements.

Standard Terms of Business

Due Date: as defined in clause 9.8.

Fees: the sums payable for the Works as set out in a Proposal.

Final Deliverables: means the final versions of Deliverables provided by Marmalade and accepted by Client.

Final Works: means all creative content developed by Marmalade, or commissioned by Marmalade, exclusively for the Works and incorporated in the Final Deliverables, including, but not limited to, any and all visual elements, graphic design, illustration, photography, animation, motion design, audio-visual works, sounds, typographic treatments and text, modifications to Client Materials, and Marmalade's selection, arrangement and coordination of such elements together with Client Materials and/or Third Party Materials.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, Trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Manager: a competent person of general authority appointed by each Party pursuant to clause 4.

Marmalade's Equipment: any equipment, including tools, systems, cabling or facilities, provided by Marmalade to the Client and used directly or indirectly in the supply of the Works, including any such items specified in a Proposal but excluding any such items which are the subject of a separate Agreement between the parties under which title passes to the Client.

Milestone: a date by which a part or all of the Works is to be completed, as set out in a Proposal.

Party: each of Marmalade and the Client.

Preliminary Works: means all creative content including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by Marmalade and which may or may not be shown and or delivered to Client for consideration but do not form part of the Final Works.

Project: means the scope and purpose of the Client's intended use of the Works as described in the Proposal.

Project Manager: a competent person of authority specific to a particular Project appointed by each Party pursuant to Schedule 2.

Proposal: means a detailed plan, agreed in accordance with clause 3, describing the services to be provided by Marmalade, the timetable for their performance and related matters, based on the format set out in Schedules 1-4.

Service Levels: any specific standards that the services provided under a particular Proposal must achieve.

Site: a website as defined in Schedule 4.

Studio Day Rate: the daily rate for Marmalade's team set out in Schedule 5.

Third Party: means a person other than either Marmalade or Client and their respective affiliated entities and controlling persons.

Standard Terms of Business

Third Party Materials: means proprietary materials owned by Third Parties which are incorporated into the Final Deliverables, including without limitation stock photography or illustration.

Trademarks: means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables to designate the origin or source of the goods or services of Client.

VAT: value added tax or any equivalent tax chargeable in the UK.

Works: the Available Services which Marmalade has agreed to provide under a Proposal, including incidental or ancillary items.

Working Files: means all underlying work product and digital files utilized by Marmalade to create the Preliminary Works and Final Works other than the format comprising the Final Deliverables.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Cover Sheet and Schedules 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 Schedules.

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

1.8 This Agreement shall be binding on, and inure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.

1.9 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.

1.10 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.

1.11 A reference to writing or written includes email but not fax.

1.12 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

1.13 A reference to this Agreement or to any other agreement or document is a reference to this Agreement or such other Agreement or document, in each case as varied or novated from time to time.

1.14 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.15 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 15 (Termination), until all Proposals that are in process are completed (the "Term").

During the Term, the Client may procure any of the Available Services by agreeing a Proposal with Marmalade pursuant to 3.

2.2 Marmalade shall provide the Works from the date specified in the relevant Proposal.

3 PROPOSALS

3.1 Each Proposal shall be agreed in the following manner:

3.1.1 the Client shall ask Marmalade to provide any or all of the Available Services and provide Marmalade with as much information as Marmalade reasonably requests in order to prepare a draft Proposal for the Available Services requested;

3.1.2 following receipt of the information requested from the Client, Marmalade shall, as soon as reasonably practicable either:

(a) provide the Client with a draft Proposal; or

(b) inform the Client that it declines to provide the requested Available Services.

3.1.3 if Marmalade provides the Client with a draft Proposal pursuant to clause 3.1.2(a), Marmalade and the Client shall discuss and agree the final terms of that draft Proposal; and

3.1.4 both parties shall sign the draft Proposal when it is agreed.

3.2 Marmalade may charge for the preparation of a Proposal on a time and materials basis in accordance with Marmalade's daily fee rates as set out in Schedule 5.

3.3 Once a Proposal has been agreed and signed in accordance with clause 3.1.4, no amendment shall be made to it except in accordance with clause 7 (Changes) or clause 19.2 (Variation).

3.4 Each Proposal shall be part of this Agreement and shall not form a separate contract to it.

4 MARMALADE'S OBLIGATIONS

4.1 Marmalade shall use reasonable endeavours to manage and provide the Works, and deliver the Deliverables to the Client, in accordance with a Proposal in all material respects.

4.2 Marmalade shall use reasonable endeavours to meet the Milestones specified in a Proposal but any such dates shall be estimates only and time for performance by Marmalade shall not be of the essence of this Agreement. In particular any failure by Marmalade to meet the Milestones caused by the Client shall not be considered breach of this Agreement.

4.3 Marmalade shall appoint a Manager in respect of the Works to be performed under each Proposal. That person shall have authority to bind Marmalade contractually on all matters relating to the relevant Works including all changes. Marmalade shall use all reasonable endeavours to ensure that the same person acts as Marmalade's manager throughout the term of the relevant Proposal, but may replace that person from time to time where reasonably necessary in the interests of Marmalade's business.

4.4 Marmalade shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Client's premises and that have been communicated to it under clause

4.5 If Marmalade's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, Marmalade shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client.

5 CLIENT'S OBLIGATIONS

5.1 Client shall:

5.1.1 co-operate with Marmalade in all matters relating to the Works;

5.1.2 appoint a Manager in respect of the Works to be performed under each Proposal. That person shall have authority to contractually bind the Client on all matters relating to the relevant Works including all changes;

5.1.3 provide, for Marmalade, its agents, Design Agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably required by Marmalade including any such access as is specified in a Proposal;

5.1.4 provide to Marmalade in a timely manner all Client Materials required under a Proposal or otherwise reasonably required by Marmalade in connection with the Works and ensure that they are accurate and complete in all material respects;

5.1.5 inform Marmalade of all health and safety and security requirements that apply at the Client's premises; if the Client wishes to make a change to those requirements which will materially affect provision of the Works, it can only do so via the procedure set out in clause 7 (Changes);

5.1.6 ensure that all the Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Works and conforms to all relevant United Kingdom standards or requirements;

5.1.7 conduct final proofreading of all written Deliverables and if any errors such as misspellings remain after such proofreading, Client shall incur the cost of correcting them;

5.1.8 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Marmalade to provide the Works, including in relation to the installation of Marmalade's Equipment, the use of all Client Materials and the use of the Client's Equipment insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment, in all cases before the date on which the Works are to start;

5.1.9 keep and maintain Marmalade's Equipment in accordance with Marmalade's instructions from time to time and not dispose of or use Marmalade's Equipment other than in accordance with Marmalade's written instructions or authorisation; and

5.1.10 comply with any additional responsibilities of the Client as set out in the relevant Proposal.

6 NON-SOLICITATION AND EMPLOYMENT

6.1 The Client shall not, without the prior written consent of Marmalade, at any time from the date on which any Works commence to the expiry of six months after the delivery of Final Deliverables solicit, employ or attempt to employ any person who is, or has been, engaged as an employee or Design Agent of Marmalade in the provision of such Works.

6.2 Any consent given by Marmalade in accordance with clause 6.1 shall be subject to the Client paying to Marmalade a sum equivalent to 25% of the then current annual remuneration of Marmalade's employee or Design Agent or, if higher, 25% of the annual remuneration to be paid by the Client to that person.

7 CHANGES

7.1 Unless otherwise provided in the Proposal, the Client shall pay additional charges for changes that it requests which are outside the scope of the Works on a time and materials basis at Marmalade's rates specified in Schedule 5. Such charges shall be in addition to all other amounts payable under the Proposal, despite any stated maximum budget or final pricing identified therein. Marmalade may extend or modify any Milestone as may be reasonably required by such changes.

7.2 If the Client requests or instructs changes which in Marmalade's reasonable judgment amount to a revision in excess of 20% of the time required to produce the Final Deliverables (a "Substantive Change Request"), Marmalade shall be permitted to submit a new Proposal to the Client for its consideration. Work shall not begin on the revised Works until agreement is reached on the new Proposal.

7.3 With respect to all changes requested by the Client, the Client shall provide as much detail as Marmalade reasonably requires to implement the proposed changes.

7.4 If the parties are unable to agree on a new Proposal occasioned by a Substantive Change Request, either Party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 18 (Multi-Tiered Dispute Resolution Procedure).

8 ACCEPTANCE, OBJECTION AND REMEDIATION

8.1 The Client within five Business Days of receipt of each Deliverable shall notify Marmalade in writing of any failure of such Deliverable to meet the Acceptance Criteria, or of any other objections, corrections, changes or amendments the Client wishes made to such Deliverable. Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and Marmalade will be given a reasonable opportunity to remediate in a commercial timescale subject to the terms of this Agreement. In the absence of such notice from the Client, the Deliverables shall be deemed to have met the Acceptance Criteria.

8.2 If any failure to meet the Acceptance Criteria results from a defect which is caused by an act or omission of the Client, or by one of the Client's sub-contractors or agents for whom Marmalade has no responsibility (a "Non-Marmalade Defect"), the Deliverables shall be deemed to have met the Acceptance Criteria notwithstanding such Non-Marmalade Defect. Marmalade shall provide assistance reasonably requested by the Client in remedying the Non-Marmalade Defect by supplying additional services or products. The Client shall pay Marmalade in full for all such additional services and products on a time and materials basis at Marmalade's daily rates specified in Schedule 5.

9 FEES AND PAYMENT

9.1 In consideration of the provision of the Works by Marmalade, the Client shall pay the Fees. Marmalade shall be entitled to contract for a lump sum to be deposited with it by the Client at the beginning of a Project, which Marmalade shall set off against subsequent Fees incurred, and any such agreed deposit shall be identified in the Proposal.

9.2 When the Fees are calculated on a time and materials basis:

9.2.1 Marmalade's Studio Day Rate for each individual person as set out in Schedule 5 is calculated on the basis of a seven-hour day, worked during Business Hours;

9.2.2 Marmalade shall be entitled to charge an overtime rate of 25% of the Studio Day Rate set out in Schedule 5 on a pro rata basis for any time worked by individuals whom it engages on the Works outside Business Hours; and

Standard Terms of Business

- 9.2.3 Marmalade shall ensure that every individual whom it engages on the Works completes time sheets to record time spent on the Works.
- 9.3 Where the Fees are calculated on a fixed price basis, their amount shall be as set out in a Proposal.
- 9.4 The Fees exclude the following, which shall be payable by the Client monthly in arrears, following submission of an appropriate invoice:
- 9.4.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Marmalade engages in connection with the Works; and
- 9.4.2 the cost to Marmalade of any materials or services procured by Marmalade from Third Parties for the provision of the Works as such items and their cost are set out in the Proposal or approved by the Client in advance from time to time.
- 9.5 Marmalade may increase the rates on Schedule 5 periodically to reflect increases in market prices, changes in pay grades or seniority of its staff or other factors and such increases shall take effect 30 days' after Marmalade's written notification thereof to the Client.
- 9.6 Any increase in the rates on Schedule 5 shall affect:
- 9.6.1 the Fees (to the extent that they are calculated based on the rates in Schedule 5) in any Proposals in process at the date the increase takes effect; and
- 9.6.2 the calculation of the Fees for Proposals entered into after the date the increase takes effect.
- 9.7 Marmalade shall invoice the Client for the Fees at the intervals specified, or on the achievement of the Milestones indicated, in the Proposal. If no intervals are so specified, Marmalade shall invoice the Client at the end of each month for Works performed during that month.
- 9.8 The Client shall pay each invoice submitted to it by Marmalade within 30 days of receipt (the "Due Date") to a bank account nominated in writing by Marmalade from time to time.
- 9.9 Without prejudice to any other right or remedy that it may have, if the Client fails to pay Marmalade any sum due under this Agreement on the Due Date:
- 9.9.1 the Client 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 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%; and
- 9.9.2 Marmalade may suspend part or all of the Works until payment has been made in full.
- 9.10 All sums payable to Marmalade under this Agreement:
- 9.10.1 are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- 9.10.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 Marmalade shall retain all Intellectual Property Rights in and to all Preliminary Works and Working Files related thereto, and the Client shall return to Marmalade all Preliminary Works and Working Files related thereto in Client's possession within 30 days of completion of the Works.

Standard Terms of Business

10.2 Marmalade shall retain ownership in any physically tangible original artwork comprising Final Works, including all rights to display or sell such artwork. The Client shall return all original artwork to Marmalade within 30 days of completion of the Works.

10.3 Marmalade shall retain all Intellectual Property Rights in the Designer Tools. Marmalade grants to Client a nonexclusive, non-transferable (other than the right to sublicense such uses to Client's publisher, web hosting or Internet service providers), perpetual, worldwide license to use the Designer Tools solely with the Final Deliverables for the Project. Client may not directly or indirectly, in any form or manner, decompile, reverse engineer, or otherwise disassemble or modify any Designer Tools comprising software or technology.

10.4 Upon completion of the Works, and expressly conditioned upon full payment of all the Fees, Marmalade shall assign to the Client all of Marmalade's Intellectual Property Rights in and to the Final Works, including Trademarks, and Marmalade shall deliver to the Client all Working Files related to the Final Works. Marmalade shall cooperate with Client and shall execute any additional documents reasonably requested by Client to evidence such assignment, and the Client shall reimburse Marmalade for Marmalade's reasonable time and out-of-pocket expenses to give effect to this clause 10.4.

10.5 Following an assignment in accordance with clause 10.4, the Client shall be responsible for the registration, maintenance and enforcement of any Trademarks comprised in the Final Works. Marmalade shall provide assistance in such registration, maintenance and enforcement only upon the Client's written request and at the Client's cost.

10.6 When use of the Client's logo, Trademarks or other identities is required for the fulfilment of the Works (the "Client Logo"), the Client hereby grants Marmalade a royalty free license to use and reproduce the Client Logo solely for the purpose of providing the Works.

10.7 In relation to the Client Materials, the Client:

10.7.1 and its licensors shall retain ownership of all Intellectual Property Rights in the Client Materials; and

10.7.2 grants to Marmalade a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of this Agreement for the purpose of providing the Works to the Client and promotional uses of the Deliverables and general marketing purposes.

10.8 The Parties acknowledge that the Intellectual Property Rights in Third Party Materials are owned by the respective Third Parties. Marmalade shall inform Client of all Third Party Materials to be procured by Marmalade that the Client may need to license at Client's own expense, and unless otherwise arranged by the Client, Marmalade shall obtain a license for the Client to use the Third Party Materials consistent with the usage rights granted herein.

10.9 Each Party waives all moral rights, or shall procure the waiver of all moral rights, to the extent that such rights are relevant to this Agreement, to which either Party or its employees, agents or subcontractors may now or at any future time be entitled under the Copyright Designs and Patents Act 1988 or under any similar legislation from time to time in force anywhere in the world.

11 INDEMNIFICATION AND LIABILITY

11.1 Marmalade warrants to the Client that Marmalade will provide the Works in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services.

11.2 Marmalade warrants to the Client that, except for Third Party Materials and the Client Materials, the Final Deliverables shall be the original work of Marmalade and/or the Design Agents.

11.3 Marmalade warrants to the Client that, if the Final Deliverables include the work of the Design Agents, Marmalade shall have secured agreements from the Design Agents granting all necessary rights, title and interest in and to the Final Deliverables sufficient for Marmalade to grant the Intellectual Property Rights provided in this Agreement.

11.4 Marmalade warrants to the Client that, to the best of Marmalade's knowledge, the Final Works (excluding Client Materials and Third Party Materials), and use of same in connection with the Project, will not violate the rights of any Third Parties. The Client acknowledges that Marmalade will not conduct any type of intellectual property clearance search (e.g., copyright, trademark, patent or design searches). If the Client or any Third Party authorised by Client modifies or uses the Deliverables outside the scope of rights granted in this Agreement, or otherwise in violation of this Agreement, the representations and warranties of Marmalade in this clause 11.4 shall be void.

11.5 Marmalade shall indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profits, loss of reputation and all other reasonable professional costs and expenses) arising out of any claim, demand or action by a Third Party which is inconsistent with Marmalade's representations and warranties at clauses 11.2 to 11.4, except in the event any such liabilities arise as a result of the use of the Client Materials or as a result of the Client's gross negligence or misconduct.

11.6 The Client warrants to Marmalade that the receipt and use in the performance of this Agreement by Marmalade, its agents, subcontractors or consultants of the Client Materials shall not infringe the rights, including any Intellectual Property Rights, of any Third Party.

11.7 The Client shall comply with the terms and conditions of any licensing Agreements which govern the use of Third Party Materials.

11.8 The Client shall comply with all laws and regulations as they relate to the Works and Deliverables.

11.9 The Client shall indemnify Marmalade against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profits, loss of reputation and all other reasonable professional costs and expenses) arising out of any claim, demand or action by a Third Party which is inconsistent with Client's representations and warranties made herein, except in the event any such liabilities arise directly as a result of Marmalade's gross negligence or misconduct.

11.10 If either Party (the "Indemnifying Party") is required to indemnify the other Party (the "Indemnified Party") under this clause 11, the Indemnified Party shall:

11.10.1 notify the Indemnifying Party in writing of any claim against it;

11.10.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

Standard Terms of Business

11.10.3 provide the Indemnifying Party with such reasonable assistance regarding the claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

11.10.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the claim or attempt to settle it, provided that the Indemnifying Party considers and defends any claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

12 DATA PROTECTION

12.1 Each Party shall comply with the applicable requirements of Data Protection Law at all times during the Term.

12.2 Each Party agrees to process Personal Data (as defined in Schedule 6) only for the purpose of this Agreement on the terms set out in this Agreement and such other purpose to which a Data Subject (as defined in Schedule 6) may consent from time to time. This clause is in addition to and does not relieve, remove or replace, a Party's obligations or rights under Data Protection Law.

12.3 Without prejudice to the generality of clauses 12.1 and 12.2:

12.3.1 when Marmalade is acting as a Data Processor (as defined in Schedule 6) of the Client Data (as defined in Schedule 6) it shall process the Client Data in accordance with the provisions of Schedule 6; and

12.3.2 the Client shall ensure that it has all necessary consents and notices in place to enable Marmalade to process the Client Data for the duration and purposes of this Agreement.

13 CONFIDENTIALITY

13.1 Each Party undertakes that it shall not at any time during this Agreement, and for a period of two years after termination or expiry of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by clause 13.2. Upon termination of this Agreement, each Party shall return to the other all confidential information in written form belonging to that other Party.

13.2 Each Party may disclose the other Party's confidential information:

13.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause 13; and

13.2.2 as may be required by law, to a court of competent jurisdiction or any governmental or regulatory authority.

13.3 No Party shall use the other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

14 LIMITATION OF LIABILITY

14.1 Marmalade has obtained insurance cover in respect of certain aspects of its own legal liability for individual claims. The limits and exclusions in this clause reflect the insurance cover Marmalade has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess liability.

14.2 References to liability in this clause 14 (Limitation of Liability) include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

14.3 Nothing in this clause 14 shall limit the Client's payment obligations under this Agreement.

14.4 Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for:

14.4.1 death or personal injury caused by negligence;

14.4.2 fraud or fraudulent misrepresentation; and

14.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (Title and Quiet Possession).

14.5 Subject to clause 14.3 and clause 14.4, Marmalade's total liability to the Client:

14.5.1 in respect of the indemnity for misrepresentations described in clause 11.5 shall be [£1 million];

14.5.2 in respect of all other claims, losses or damages, whether arising from contact, tort (including negligence), breach of statutory duty or otherwise arising under or in connection with this Agreement shall not exceed 110% of the Fees payable in the preceding 12 months and actually received by Marmalade.

14.6 Subject to clause 14.3, clause 14.4, clause 11.5, and clause 11.9, this clause 14.6 specifies the types of losses that are excluded:

14.6.1 loss of profits;

14.6.2 loss of sales or business;

14.6.3 loss of agreements or contracts;

14.6.4 loss of anticipated savings;

14.6.5 loss of use or corruption of software, data or information;

14.6.6 loss of or damage to goodwill; and

14.6.7 indirect or consequential loss.

14.7 Marmalade has given commitments as to compliance of the Works with relevant specifications in clause 4.1 (Marmalade's Obligations). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

14.8 Unless the Client notifies Marmalade that it intends to make a claim in respect of an event within the notice period, Marmalade shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

15 TERMINATION

15.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement on giving not less than three months' written notice to the other Party.

15.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

15.2.1 the other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

15.2.2 the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

15.2.3 the other 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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (the "IA 1986") as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

15.2.4 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

15.2.5 the other Party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;

15.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other Party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

15.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other Party (being a company, partnership or limited liability partnership);

15.2.8 the holder of a qualifying floating charge over the assets of that other Party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

15.2.9 a person becomes entitled to appoint a receiver over all or any of the assets of the other Party or a receiver is appointed over all or any of the assets of the other Party;

15.2.10 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;

15.2.11 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.1 to clause 15.2.10 (inclusive);

15.2.12 the other Party suspends or ceases, or threatens to suspend or cease, carrying

on all or a substantial part of its business; or

15.2.13 the other Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

15.3 For the purposes of clause 15.2.1 material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from:

15.3.1 a substantial portion of this Agreement; or

15.3.2 any of the obligations set out in clauses 10 (Intellectual Property Rights) 12 (Data Protection), 13 (Confidentiality);

over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding. In particular, a material breach will not be constituted by Marmalade's failure to meet a Milestone due to changes to a Proposal requested by the Client or to delays caused by the Client's failure to comply with its obligations as set out in clause 5.

15.4 Without affecting any other right or remedy available to it, Marmalade may terminate this Agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Agreement on the Due Date and remains in default not less than 30 days after being notified in writing to make such payment.

16 OBLIGATIONS ON TERMINATION AND SURVIVAL

16.1 On termination or expiry of this Agreement:

16.1.1 the Client shall immediately pay to Marmalade all of Marmalade's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, Marmalade may submit an invoice, which shall be payable immediately on receipt;

16.1.2 the Client shall, promptly return all of Marmalade's Equipment. If the Client fails to do so, then Marmalade may enter the Client's premises and take possession of Marmalade's Equipment. Until Marmalade's Equipment has been returned or repossessed, the Client shall be solely responsible for its safe keeping; and

16.1.3 Marmalade shall promptly return any of the Client Materials not used up in the provision of the Works.

16.2 On termination or expiry of this Agreement, all existing Proposals shall terminate automatically.

16.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

16.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

17 FORCE MAJEURE

17.1 Force Majeure Event means any circumstance not within a Party's reasonable control including, without limitation:

17.1.1 acts of God, flood, drought, earthquake or other natural disaster;

17.1.2 epidemic or pandemic;

17.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation

Standard Terms of Business

for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

17.1.4 nuclear, chemical or biological contamination or sonic boom;

17.1.5 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;

17.1.6 collapse of buildings, fire, explosion or accident;

17.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party);

17.1.8 interruption or failure of utility or internet service in the location of Marmalade's activities, or malfunction of associated communications towers or satellites; and

17.1.9 loss or interruption of convenient access to computer services necessary for the Works caused by a computer virus of general or specific application.

17.2 Provided it has complied with clause 17.4, 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. The time for performance of such obligations shall be extended accordingly.

17.3 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

17.4 The Affected Party shall:

17.4.1 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

17.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

18 MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

18.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (the "Dispute") then the Parties shall follow the procedure set out in this clause:

18.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the Managers of Client and Marmalade shall attempt in good faith to resolve the Dispute;

18.1.2 if these individuals are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Client and the Managing Director of Marmalade who shall attempt in good faith to resolve it; and

18.1.3 if the [SENIOR OFFICER TITLE] of the Client and the Managing Director of Marmalade are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (the "CEDR") model mediation procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (the "ADR Notice") to the

Standard Terms of Business

other Party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR. The mediation will start not later than 15 days after the date of the ADR Notice.

18.2 No Party may commence any court proceedings under clause 19.12 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

18.3 If the Dispute is not resolved within 90 days after service of the ADR Notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 90 days, or the mediation terminates before the expiration of the said period of 90 days, the Dispute shall be finally resolved by the courts of England in accordance with clause 19.12.

19 GENERAL

19.1 Assignment and Other Dealings

19.1.1 Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

19.1.2 Marmalade shall not at any time assign, transfer, mortgage, charge, or declare a trust over any or all of its rights under this Agreement, provided that Marmalade retains absolute discretion to subcontract any and all of the services necessary for any of the Works to one or more contractors or Design Agents.

19.1.3 Either Party, however, may assign this Agreement as part of a sale or other transfer of its business to a Third Party.

19.2 Variation

19.2.1 Subject to clause 7 (Changes), no variation of this Agreement shall be effective unless it is in writing and signed by the Parties.

19.3 Waiver

19.3.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

19.3.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19.3.3 A Party that waives a right or remedy provided under this Agreement or by law in relation to one Party, or takes or fails to take any action against that Party, does not affect its rights in relation to any other Party.

19.4 Rights and Remedies

19.4.1 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19.5 Severance

19.5.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

19.5.2 If any provision or part-provision of this Agreement is deemed deleted under clause 19.5.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

Standard Terms of Business

19.6 Entire Agreement

19.6.1 This Agreement constitutes the entire Agreement between the Parties and supersedes and extinguishes all previous Agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.6.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

19.7 No Partnership or Agency

19.7.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

19.7.2 The parties acknowledge that this Agreement does not create an exclusive relationship and each Party is permitted to contract with or solicit similar or dissimilar business from any other person.

19.7.3 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

19.7.4 Marmalade is permitted to reproduce, publish and display the Final Works and Final Deliverables, to the extent that they do not communicate the Client's confidential information, in its portfolios and websites; to identify itself as the author of such items; and to describe therein its role in relation to the Project.

19.8 Third Party Rights

19.8.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

19.8.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

19.9 Notices

19.9.1 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the address specified in the Proposal.

19.9.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or

(c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 19.10.2(c), business hours means 9.30am to 5.30pm GMT Monday to Friday on a day that is not a public holiday in the place of receipt.

19.9.3 This clause does not apply to the service of any proceedings or any documents

Standard Terms of Business

in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19.10 Governing Law

19.10.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

19.11 Jurisdiction

19.11.1 Each Party irrevocably agrees that subject to clause 18 (Multi-Tiered Dispute Resolution Procedure) the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.