

# Social media marketing terms and conditions

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Provider's services shall be governed by these Terms and Conditions, and the Provider will ask the Client for the Client's express written acceptance of these Terms and Conditions before providing any such services to the Client.

## 1. Definitions

1.1 In these Terms and Conditions, except to the extent expressly provided otherwise:

**"Assigned Deliverables"** means those Deliverables (excluding the Third Party Materials and the Client Materials) the rights in which are to be assigned (rather than licensed) by the Provider to the Client under Clause 9, as specified in Section 4 of the Statement of Work;

**"Business Day"** means any weekday other than a bank or public holiday in the Isle of Man;

**"Business Hours"** means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

**"Charges"** means the following amounts:

- (a) the amounts specified in Section 7 of the Statement of Work;
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying the Provider's standard time-based charging rates (as notified by the Provider to the Client before the date of the Contract) by the time spent by the Provider's personnel performing the Services (rounded down by the Provider to the nearest quarter hour);

**"Client"** means the person or entity identified as such in Section 1 of the Statement of Work;

**"Client Confidential Information"** means:

- (a) any information disclosed by or on behalf of the Client to the Provider at any time before the termination of the Contract (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Provider (acting reasonably) to be confidential; and
- (b) the terms of the Contract;

**"Client Indemnity Event"** has the meaning given to it in Clause 17.3;

**"Client Materials"** means all works and materials supplied by or on behalf of the Client to the Provider for incorporation into the Deliverables or for some other use in connection with the Services;

**"Client Personal Data"** means any Personal Data that is processed by the Provider on behalf of the Client in relation to the Contract;

**"Client Trade Marks"** means any following registered and unregistered trade marks of the Client as advised by the Client to the Provider

**"Client Websites"** means any website or websites of the Client in respect of which the Services are provided or in respect of which the Provider has an obligation to provide the Services;

**"Confidential Information"** means the Provider Confidential Information and the Client Confidential Information;

**"Contract"** means a particular contract made under these Terms and Conditions between the Provider and the Client;

**"Data Protection Laws"** means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Client Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

**"Deliverables"** means those deliverables specified in Section 4 of the Statement of Work that the Provider has agreed to deliver to the Client under these Terms and Conditions

**"Effective Date"** means the date of execution of the Contract;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Licensed Deliverables"** means the Deliverables excluding the Assigned Deliverables, the Third Party Materials and the Client Materials;

**"Minimum Term"** means, in respect of the Contract, the period of 3 months beginning on the Effective Date;

**"Online Account"** means any user or customer account on any third party website, or on any third party software application accessible via the internet, that is used by the Provider in the course of providing the Services;

**"Personal Data"** has the meaning given to it in the Data Protection Laws applicable in the Isle of Man from time to time;

**"Provider"** means Darren Barklie operating from Market Hall, Douglas, Isle of Man, IM1 2BQ.

**"Provider Confidential Information"** means:

- (a) any information disclosed by or on behalf of the Provider to the Client at any time before the termination of the Contract (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Client (acting reasonably) to be confidential; and
- (b) the terms of the Contract;

**"Services"** means any services that the Provider provides to the Client, or has an obligation to provide to the Client, under these Terms and Conditions;

**"Social Media Marketing Services"** means the creation of accounts connected to the Client on Social Media Platforms, the establishment and growth of user networks associated with such accounts, the creation of content for publication on and distribution through Social Media Platforms, the publication of such content on and distribution of such content through Social Media Platforms, and the monitoring and analysis of the impact of these services, as detailed in Section 3 of the Statement of Work;

**"Social Media Platforms"** means Facebook, Twitter, YouTube and LinkedIn, and any other social media platforms agreed by the parties in writing from time to time;

**"Statement of Work"** means a written statement of work agreed by or on behalf of each of the parties;

**"Term"** means the term of the Contract, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

**"Terms and Conditions"** means all the documentation containing the provisions of the Contract, namely the main body of these Terms and Conditions and the Statement of Work, including any amendments to that documentation from time to time; and

**"Third Party Materials"** means the works and/or materials comprised in the Deliverables (excluding the Client Materials), the Intellectual Property Rights in which are owned by a third party, and which are specified in Section 4 of the Statement of Work or which the parties agree in writing shall be incorporated into the Deliverables.

## 2. Term

- 2.1 The Contract shall come into force upon the Effective Date.
- 2.2 The Contract shall continue in force indefinitely, subject to termination in accordance with Clause 20 or any other provision of these Terms and Conditions.
- 2.3 Unless the parties expressly agree otherwise in writing, each Statement of Work shall create a distinct contract under these Terms and Conditions.

## 3. Social Media Marketing Services

- 3.1 The Provider shall provide the Social Media Marketing Services to the Client during the Term.
- 3.2 Each party must comply with the terms and conditions of the Social Media Platforms in respect of its activities relating to the Social Media Marketing Services and the Contract more generally.
- 3.3 Subject to Clause 18.1, but notwithstanding any plans or projections communicated by the Provider to the Client, the Provider does not give any guarantees in relation to the outcomes of the Social Media Marketing

Services, and in particular does not guarantee that the Social Media Marketing Services will result in increased website traffic, user engagement, revenue or profits.

## 4. Client obligations

- 4.1 Save to the extent that the parties have agreed otherwise in writing, the Client must provide to the Provider, or procure for the Provider, such:
  - (a) co-operation, support and advice;
  - (b) information and documentation; and
  - (c) governmental, legal and regulatory licences, consents and permits, as are reasonably necessary to enable the Provider to perform its obligations under the Contract.
- 4.2 The Client shall provide to the Provider:
  - (a) assistance in determining appropriate keywords and keyword phrases to be targeted using the Services;

- (b) such articles, blog posts and other written materials as the Provider may reasonably request in connection with the performance of the Services;
- (c) direct access to analytical data concerning the Client's relevant websites, such as data concerning referral sources, visitor activity, website usage, conversion rates and similar; and
- (d) an email account using a relevant Client domain name, if applicable.

4.3 The Client acknowledges that the promotion of a website may lead to increased bandwidth, processing capacity and/or storage requirements for the website, and the Client shall be responsible for arranging and paying for any services required to meet such requirements.

## 5. Client Materials

5.1 The Client must supply to the Provider the Client Materials specified in Section 6 of the Statement of Work, in accordance with the timetable specified in Section 5 of the Statement of Work.

5.2 The Client hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Client Materials to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under these Terms and Conditions, together with the right to sub-license these rights to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under these Terms and Conditions.

5.3 The Client warrants to the Provider that the Client Materials OR will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

## 6. Client Websites

6.1 The Client shall provide to the Provider, promptly following receipt of a written request from the Provider, the facilities to access and make changes to the Client Websites to the extent reasonably necessary to enable the Provider to fulfil its obligations under these Terms and Conditions.

6.2 The Client must not reverse, revert or materially alter any changes to the Client Websites made by or upon the instructions of the Provider in the course of providing the Services without obtaining the Provider's prior written consent.

6.3 The Client must not use the Client Websites:

- (a) to host, store, send, relay or process any material; or
  - (b) for any purpose,
- which is unlawful, illegal or fraudulent, or which breaches any applicable laws, regulations or legally binding codes, or infringes any third party rights, or may give rise to any form of legal action against any person.

## 7. Online Accounts

7.1 If the Provider creates any Online Accounts after the Effective Date (excluding accounts that the Provider uses to provide services to a third party customer before use in connection with the fulfilment of the Provider's obligations under these Terms and Conditions), then the Client shall have and retain all rights to such Online Accounts. The Provider must promptly follow receipt of a written request from the Client supply to the Client login details for such Online Accounts. If the Provider has not previously done so, the Provider must promptly following the end of the Term supply to the Client login details for such Online Accounts, and the Provider must not itself use any such Online Accounts after the end of the Term without the prior written consent of the Client.

7.2 The parties may from time to time agree in writing derogations from the rules set out in this Clause 7 relating to the Online Accounts.

## 8. Client Trade Marks

8.1 Within 10 Business Days following the Effective Date, the Client shall provide or make available to the Provider representations of the Client Trade Marks in a digital format reasonably satisfactory to the Provider.

8.2 The Client grants to the Provider a non-exclusive licence to use the Client Trade Marks during the Term for the purposes (and only for the purposes) of enabling the provision of the Services to the Client, and providing that the Client has given its prior written consent in relation to the type of use in question.

8.3 The Provider must ensure that all uses of the Client Trade Marks will be in accordance with any style guide supplied or made available by the Client to the Provider.

8.4 The Provider shall ensure that all instances of the use of the Client Trade Marks will be of a reasonable professional standard.

8.5 Notwithstanding any other provision of these Terms and Conditions, the Provider must not use the Client Trade Marks in any way that:

- (a) may invalidate or lead to the revocation of or otherwise jeopardise any registered trade mark protection benefiting the Client Trade Marks;

(b) may assist with any application to cancel or invalidate any registered Client Trade Mark or any opposition to any application by the Client to register any Client Trade Mark;

(c) is likely to cause harm to the goodwill attaching to any of the Client Trade Marks;

(d) may prejudice the right or title of the Client to the Client Trade Marks; or

(e) is liable to bring the Client or any Client Trade Mark into disrepute.

8.6 All goodwill arising as a result of, or in relation to, the use of the Client Trade Marks will accrue exclusively to the Client.

8.7 If the Client considers that a use of the Client Trade Marks by the Provider breaches the provisions of this Clause 8 or is otherwise undesirable, the Client may issue a notice to the Provider requesting that such usage cease, and the Provider must ensure that such usage will cease within 5 Business Days following receipt of such a notice.

8.8 The Client warrants to the Provider that the use by the Provider of the Client Trade Marks in accordance with these Terms and Conditions will not infringe any person's Intellectual Property Rights in any jurisdiction and under any applicable law.

8.9 The Provider will not by virtue of the Contract obtain or claim any right, title or interest in or to the Client Trade Marks except as expressly set out in these Terms and Conditions.

8.10 Within 10 Business Days following the termination of the Contract, the Provider must cease to use the Client Trade Marks and must:

(a) remove or permanently obscure Client Trade Marks that appear on any works and materials in the possession or control of the Provider; and

(b) to the extent that neither removal nor permanent obscuring is practicable, deliver to the Client or destroy (as the Provider shall determine) all those works and materials in the possession or control of the Provider on which the Client Trade Marks appear.

## 9. Intellectual Property Rights

9.1 The Provider hereby:

(a) assigns to the Client all of its Intellectual Property Rights in the Assigned Deliverables, whether those Intellectual Property Rights exist on the Effective Date or come into existence during the Term, excluding the Intellectual Property Rights in the Client Materials and the Third Party Materials; this assignment is for the full term of the assigned rights, including all extensions, renewals, reversions and revivals, and includes the right to bring proceedings for past infringements of the assigned rights; and

(b) grants to the Client a non-exclusive, worldwide, perpetual and irrevocable licence to copy, store, distribute, publish, adapt, edit and

otherwise use the Licensed Deliverables (excluding the Third Party Materials and the Client Materials).

## 10. Reputation and goodwill

10.1 The Provider undertakes that it will not, during the Term and without the prior written consent of the Client, take any action that will or is reasonably likely to have a material negative impact on the reputation and/or goodwill of the Client.

10.2 The Client undertakes that it will not, during the Term and without the prior written consent of the Provider, take any action that will or is reasonably likely to have a material negative impact on the reputation and/or goodwill of the Provider.

## 11. Charges

11.1 The Client shall pay the Charges to the Provider in accordance with these Terms and Conditions.

11.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Client's written consent before performing Services that result in any estimate of time-based Charges given to the Client being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Client agrees otherwise in writing, the Client shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 11.2.

11.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Client to the Provider (if applicable).

11.4 The Provider may elect to vary any element of the Charges by giving to the Client not less than 30 days' written notice of the variation.

## 12. Timesheets

12.1 The Provider must:

- (a) ensure that the personnel providing Services, the Charges for which will be based in whole or part upon the time spent in the performance of those Services, complete reasonably detailed records of their time spent providing those Services; and
- (b) retain such records during the Term, and for a period of at least 12 months following the end of the Term.

12.2 Within 10 Business Days following receipt of a written request, the Provider shall supply to the Client copies of such of the timesheets referred to in Clause 12.1 and in the Provider's possession or control as the Client may specify in that written request.

## 13. Payments

13.1 The Provider shall issue invoices for the Charges to the Client from time to time during the Term.

13.2 The Client must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 13.

13.3 The Client must pay the Charges by debit card, credit card, bank transfer or cheque (using such payment details as are notified by the Provider to the Client from time to time).

13.4 If the Client does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may:

(a) charge the Client interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month).

## 14. Confidentiality obligations

14.1 The Provider must:

- (a) keep the Client Confidential Information strictly confidential;
- (b) not disclose the Client Confidential Information to any person without the Client's prior written consent;
- (c) use the same degree of care to protect the confidentiality of the Client Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care.

14.2 The Client must:

- (a) keep the Provider Confidential Information strictly confidential;
- (b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent;
- (c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Client uses to protect the Client's own confidential information of a similar nature, being at least a reasonable degree of care.

14.3 Notwithstanding Clauses 14.1 and 14.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors.

14.4 No obligations are imposed by this Clause 14 with respect to a party's Confidential Information if that Confidential Information:

- (a) is known to the other party before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the other party; or
- (c) is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

14.5 The restrictions in this Clause 14 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.

14.6 The provisions of this Clause 14 shall continue in force for a period of 5 years following the termination of the Contract, at the end of which period they will cease to have effect.

## 15. Data protection

15.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Client Personal Data.

15.2 The Client warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Contract.

15.3 The Client shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Contract, the Personal Data of the of the following types: Biographical and professional information and the Provider shall only process the Client Personal Data for the following purposes: providing the Services.

15.4 The Provider shall only process the Client Personal Data during the Term, subject to the other provisions of this Clause 15.

15.5 The Provider shall only process the Client Personal Data on the documented instructions of the Client (including with regard to transfers of the Client Personal Data to any place outside the European Economic Area, as set out in these Terms and Conditions or any other document agreed by the parties in writing).

15.6 The Provider shall promptly inform the Client if, in the opinion of the Provider, an instruction of the Client relating to the processing of the Client Personal Data infringes the Data Protection Laws.

15.7 Notwithstanding any other provision of these Terms and Conditions, the Provider may process the Client Personal Data if and to the extent that the Provider is required to do so by Isle of Man Law. In such a case, the Provider shall inform the Client of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

15.8 The Provider shall ensure that persons authorised to process the Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

15.9 The Provider and the Client shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Client Personal Data.

15.10 The Provider must not engage any third party to process the Client Personal Data without the prior specific or general written authorisation of the Client. In the case of a general written authorisation, the Provider shall inform the Client at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Client objects to any such changes before their implementation, then the Provider must not implement the changes. The Provider shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 15.

15.11 As at the Effective Date, the Provider is hereby authorised by the Client to engage, as sub-processors with respect to Client Personal Data who are resident in the Isle of Man.

15.12 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Client with the fulfilment of the Client's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

15.13 The Provider shall assist the Client in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider shall report any Personal Data breach relating to the Client Personal Data to the Client within 48 hours following the Provider becoming aware of the breach. The Provider may charge the Client at its standard time-based charging rates for any work performed by the Provider at the request of the Client pursuant to this Clause 15.13.

15.14 The Provider shall make available to the Client all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 15 and the Data Protection Laws.

15.15 The Provider shall, at the choice of the Client, delete or return all of the Client Personal Data to the Client after the provision of services relating to the processing, and shall delete existing copies save to the extent that Isle of Man law requires storage of the relevant Personal Data.

15.16 The Provider shall allow for and contribute to audits, including inspections, conducted by the Client or another auditor mandated by the Client. The Provider may charge the Client at its standard time-based charging rates for any work performed by the Provider at the request of the Client pursuant to this Clause 15.16.

15.17 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under these Terms and Conditions, then the parties shall use their best endeavours promptly to agree such variations to these Terms and Conditions as may be necessary to remedy such non-compliance.

## 16. Warranties

16.1 The Provider shall provide the Services with reasonable skill and care.

16.2 The Client warrants to the Provider that it has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions.

16.3 All of the parties' warranties and representations in respect of the subject matter of the Contract are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Contract will be implied into the Contract or any related contract.

## 17. Indemnities

17.1 The Client shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Client of these Terms and Conditions.

## 18. Limitations and exclusions of liability

18.1 Nothing in these Terms and Conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

18.2 The limitations and exclusions of liability set out in this Clause 18 and elsewhere in these Terms and Conditions:

- (a) are subject to Clause 18.1; and
- (b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

18.3 The Provider shall not be liable to the Client in respect of any losses arising out of a Force Majeure Event.

18.4 The Provider shall not be liable to the Client in respect of any loss of profits or anticipated savings.

18.5 The Provider shall not be liable to the Client in respect of any loss of revenue or income.

18.6 The Provider shall not be liable to the Client in respect of any loss of use or production.

18.7 The Provider shall not be liable to the Client in respect of any loss of business, contracts or opportunities.

18.8 The Provider shall not be liable to the Client in respect of any loss or corruption of any data, database or software.

18.9 The Provider shall not be liable to the Client in respect of any special, indirect or consequential loss or damage.

18.10 The liability of Provider to the Client under the Contract in respect of any event or series of related events shall not exceed the greater of:

- (a) £2,000 and
- (a) the total amount paid and payable by the Client to the Provider under the Contract in the 12 month period preceding the commencement of the event or events.

18.11 The aggregate liability of the Provider to the Client under the Contract shall not exceed the greater of:

- (a) £2,000 and

(b) the total amount paid and payable by the Client to the Provider under the Contract.

## 19. Force Majeure Event

19.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Contract (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

19.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Contract, must:

- (a) promptly notify the other; and
- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

19.3 A party whose performance of its obligations under the Contract is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## 20. Termination

20.1 Either party may terminate the Contract by giving to the other party not less than 30 days' written notice of termination.

20.2 Either party may terminate the Contract immediately by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of the Contract, and the breach is not remediable;
- (b) the other party commits a material breach of the Contract, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches the Contract (irrespective of whether such breaches collectively constitute a material breach).

20.3 Either party may terminate the Contract immediately by giving written notice of termination to the other party if:

- (a) the other party:
  - (i) is dissolved;
  - (ii) ceases to conduct all (or substantially all) of its business;
  - (iii) is or becomes unable to pay its debts as they fall due;
  - (iv) is or becomes insolvent or is declared insolvent; or

- (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract); or
- (d) if that other party is an individual:
  - (i) that other party dies;
  - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
  - (iii) that other party is the subject of a bankruptcy petition or order.

20.4 The Provider may terminate the Contract immediately by giving written notice to the Client if:

- (a) any amount due to be paid by the Client to the Provider under the Contract is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Provider has given to the Client at least 30 days' written notice, following the failure to pay, of its intention to terminate the Contract in accordance with this Clause 20.4.

## 21. Effects of termination

21.1 Upon the termination of the Contract, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 7, 8.10, 9.1, 12, 13.2, 13.4, 14, 15.1, 15.3, 15.4, 15.5, 15.6, 15.7, 15.8, 15.9, 15.10, 15.11, 15.12, 15.13, 15.14, 15.15, 15.16, 15.17, 17, 18, 21, 22.2, 25 and 26.

21.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Contract shall not affect the accrued rights of either party.

## 22. Status of Provider

22.1 The Provider is not an employee of the Client, but an independent contractor.

22.2 The termination of the Contract will not constitute unfair dismissal; nor will the Provider be entitled to any compensation payments, redundancy payments or similar payments upon the termination of the Contract.

## 23. Notices

23.1 Any notice given under these Terms and Conditions must be in writing, whether or not described as "written notice" in these Terms and Conditions.

23.2 Any notice from one party to the other party under these Terms and Conditions must be given by one of the following methods (using the relevant contact details set out in Section 8 of the Statement of Work):

(a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or

(b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting, providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

23.3 The addressee and contact details set out in Section 8 of the Statement of Work may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 23.

## 24. Subcontracting

24.1 Subject to any express restrictions elsewhere in these Terms and Conditions, the Provider may subcontract any of its obligations under the Contract.

24.2 The Provider shall remain responsible to the Client for the performance of any subcontracted obligations.

## 25. General

25.1 No breach of any provision of the Contract shall be waived except with the express written consent of the party not in breach.

25.2 If any provision of the Contract is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Contract will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

25.3 The Contract may not be varied except by a written document signed by or on behalf of each of the parties.

25.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under these Terms and Conditions.

25.5 The Contract is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Contract are not subject to the consent of any third party.

25.6 Subject to Clause 18.1, these Terms and Conditions shall constitute the entire agreement between the parties in relation to the subject matter of these Terms and Conditions, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

25.7 The Contract shall be governed by and construed in accordance with Isle of Man law.

25.8 The courts of the Isle of Man shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Contract.

## 26. Interpretation

26.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

26.2 The Clause headings do not affect the interpretation of these Terms and Conditions.

26.3 References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

26.4 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.