

TERMS & CONDITIONS



OUR BRAND FAMILY



STANDARD TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. Defined words and expressions used in this Contract shall take the following meanings:

'Business Day' a day other than a Saturday, Sunday or public bank holiday on which banks in London are open for business;

'Client' the party to whom the Proposal is issued and which is named thereon;

'Client Data' means any personal data provided by or on behalf of the Client (or a user of the Services or Deliverables);

'Confidential Information' has the meaning given in clause 7.1;

'Contract' the contract between 21Digital and the Client comprising the Proposal, these Terms and the applicable Service Schedule(s);

'Defects' alleged failure of the Services or the Deliverables (or any part thereof) to comply with the requirements agreed between the parties;

'Deliverables' means the end product to be provided to or used by or for the benefit of the Client, defined more particularly with reference to the applicable Service Schedule(s);

'Deposit' has the meaning given in clause 4.1;

'DP Legislation' means any and all applicable data protection legislation in force from time to time including but not limited to the Data Protection Act 1998, the General Data Protection Regulation, the Electronic Communications Data Protection Directive, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction and the terms "data controller", "data processor", "data subject", "personal data", "processing" and "data protection principles" bear the respective meaning given to them in the DP Legislation;

'Excluded IPRs' has the meaning given in clause 9.1;

'Fees' the fees payable by the Client to 21Digital for the Services as defined in the in the Proposal;

'Inappropriate Content' has the meaning given in clause 6.1;

'Intellectual Property Rights' patents, rights to inventions, copyright and related rights, trade marks 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,

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, including the right to sue for and recover damages for past infringements;

'Loss' any actions, charges, claims, costs, damages, demands, expenses, fees, fines, liabilities, losses, penalties and proceedings;

'Materials' the content, information, instructions, scripts, media, documentation or other materials provided to 21Digital by the Client from time to time and in whatever form or media for incorporation in the Deliverables or otherwise for 21Digital's use in conjunction with the provision of the Service(s);

'Order' a request from the Client for 21Digital to provide the Service(s) detailed in the Proposal, issued to 21Digital by either signing and submitting the Proposal or otherwise indicating its acceptance of the Proposal in writing;

'Order Confirmation' a written communication from 21Digital to the Client committing its acceptance of the Order;

'Proposal' the proposal/quotation issued by 21Digital to the Client in writing, which for the avoidance of doubt shall include email proposals;

'Set-Up-Fee' the initial set up fee in respect of a Service as defined in the Proposal;

'Service(s)' the service(s) to be delivered by 21Digital to the Client as particularised in the Proposal and in relation to which the terms in the respective Service Schedule(s) shall apply;

'Service Schedule(s)' the schedule(s) to these Terms, which contain specific terms and conditions relating to the provision of the respective Service(s) and any documents specifically referred to therein;

'Term' the period of time during which the Contract remains in force;

'Terms' means these standard terms and conditions; and

'21Digital' means DPI 21 Limited, a company incorporated in England and Wales (company number 04891301), whose registered office is at 16 Trident Part, Trident Way, Blackburn, Lancashire, BB1 3NU.

'Virus' any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service,

equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

1.2. Unless the context otherwise requires:

1.2.1. references to clauses, Schedules and paragraphs are to the relevant clauses, Schedules or paragraphs of this Contract;

1.2.2. the headings to the clauses, Schedules and paragraphs of this Contract will not affect the interpretation;

1.2.3. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment.

2. FORMATION OF CONTRACT

2.1. The Proposal shall remain valid for a period of 30 days and where the Client wishes to receive the Services detailed therein, it shall submit an Order to 21Digital within that time period. If there are any inconsistencies between the Proposal and these Terms, the Proposal shall take precedence.

2.2. 21Digital may use the information given to it by the Client or information it may hold about the Client, or which it receives from any enquiry made with various agencies (including but not limited to credit reference agencies) in reaching any determination as to the basis on which it deals with the Client and with a view to protecting parties from fraudulent transactions.

2.3. Provided that 21Digital reserves the right at its absolute discretion to accept or reject an Order or to withdraw, vary or reissue the Proposal prior to formation of the Contract, 21Digital shall within a reasonable period of its receipt of an Order (where it wishes to accept it) issue an Order Confirmation.

2.4. At the point at which 21Digital delivers an Order Confirmation or (if earlier), commences the delivery of any of the Service(s), the Contract shall be formed between the parties.

3. SERVICES – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE AND THE TERMS OF THE APPLICABLE SERVICE SCHEDULE

3.1. Following 21Digital's issuance of an Order Confirmation, it shall provide the Service(s) in accordance with these Terms and the applicable Service Schedule(s).

3.2. 21Digital may, one prior written notice to the Client, make changes to the Services, provided that such changes do not have a materially adverse effect on the Client's business operations.

3.3. Except for the limited warranties set out in this

Contract, 21Digital excludes and the Client waives all other representations, conditions, terms and warranties, express, implied or collateral, arising by operation of law or otherwise, including but not limited to implied warranties, terms or conditions of satisfactory, quality or fitness for a particular purpose or conformance to description, except to the extent such representations, conditions, terms or warranties may not be excluded by law.

4. FEES AND PAYMENT – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

4.1. Where specified within the Proposal, the Client shall pay 21Digital a non-refundable deposit upon receipt of the Order Confirmation ('Deposit'). Until such time as the Deposit is received in full and clear funds by 21Digital, it shall not be obliged to provide the Services to the Client.

4.2. Save to the extent detailed in the Proposal, 21Digital may raise and issue the Client with interim invoices from time to time and the Client shall pay the Fees applicable to such invoices within 30 days of the date of the relevant invoice. Time for payment of all Fees under and in accordance with the Contract is of the essence.

4.3. Payment of all Fees are due in Pounds Sterling and shall be made without set off, counterclaim or deduction.

4.4. In the event that 21Digital has not received payment of any due Fees by the due date for payment and without prejudice to any other rights or remedies of 21Digital:

4.4.1. 21Digital may suspend or otherwise disable the provision of, or cease to provide any or all of the Service(s) whilst the relevant Fees concerned remain unpaid; and

4.4.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of National Westminster Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

4.5. The Fees exclude value added tax and any applicable additional or substitute taxes, levies, imposts, duties, fees or charges whatsoever and whenever, all of which shall be paid additionally by the Client.

4.6. In the event of a change in applicable law or regulation that materially changes the cost of delivery of the applicable Service(s), 21Digital shall give the Client written notice thereof and the Client shall have 30 days to accept such increased costs else the applicable portion of the Contract shall be deemed terminated with immediate effect.

4.7. If the Client disputes any portion of an invoice, the Client must pay the undisputed portion of an invoice in full, and within 30 days of receipt of said invoice and submit to 21Digital a documented claim for the disputed amount.

5. OBLIGATIONS OF CLIENT

5.1. The Client shall be responsible for:

5.1.1. providing 21Digital with:

(A) all necessary co-operation in relation to this Contract; and

(B) all necessary access to such information as may be required by 21Digital;

(C) security access information and configuration services;

(D) safe access to, egress from and movement around its premises, where the same is needed to be accessed by 21Digital in order to provide any of the Services;

5.1.2. compliance with all applicable laws and regulations with respect to its activities under this Contract;

5.1.3. carrying out all other Client responsibilities set out in this Contract in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, 21Digital may adjust any agreed timetable or delivery schedule as reasonably necessary;

5.1.4. obtaining and shall maintain all necessary licences, consents, and permissions necessary for 21Digital, its contractors and agents to perform their obligations under this Contract, including without limitation the Services;

5.1.5. ensuring that its network and systems comply with the relevant specifications provided by 21Digital from time to time; and

5.1.6. procuring and maintaining its network connections and telecommunications links from its systems to 21Digital's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

5.2. The Client shall not access, store, distribute or transmit any Viruses, or any material during the course of its receipt of the Services that:

5.2.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

5.2.2. facilitates illegal activity;

5.2.3. depicts sexually explicit images;

5.2.4. promotes unlawful violence;

5.2.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

5.2.6. is otherwise illegal or causes damage or injury to any person or property;

and 21Digital reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause.

6. MATERIALS AND INAPPROPRIATE CONTENT

6.1. The Client shall be responsible for the accuracy and completeness of the Materials and shall provide them in whatever format required by 21Digital.

6.2. The Client shall ensure that the Materials do not infringe

any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party's Intellectual Property Rights) ('Inappropriate Content').

6.3. The Client shall indemnify 21Digital against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.

7. CONFIDENTIALITY

7.1. Each party agrees and undertakes that it will keep confidential and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party all information of a confidential nature (including trade secret, information of commercial value, the terms of this Contract and any information in written or other documentary form supplied by one party to the other) which may become known to that party from the other party ("Confidential Information") unless the Confidential Information is public knowledge or already known to that party at the time of disclosure or subsequently become public knowledge other than by breach of this Contract or subsequently comes lawfully into the possession of that party from a third party.

7.2. To the extent necessary to implement the provisions of this Contract each party may disclose the Confidential Information to those of its employees as may be necessary or desirable provided that before any such disclosure each party shall make those employees aware of its obligations of confidentiality under this Contract and shall at all times procure compliance by those employees with them.

8. DATA PROTECTION

8.1. Each party shall, in performing its obligations under this Contract, comply with DP Legislation.

8.2. If 21Digital processes any Client Data when performing its obligations under this Contract, the parties record their intention that the Client shall be the data controller and 21Digital shall be a data processor and in any such case:

8.2.1. the Client warrants that it has a legal basis under the DP Legislation to enable the lawful transfer of the Client Data to 21Digital for the duration and the purposes of the Contract and, where required under the DP Legislation, it has obtained the prior and express consent of each data subject to transfer the Client Data to 21Digital in accordance with DP Legislation and that the Client is accordingly entitled to transfer the Client Data to 21Digital so that it may lawfully use, process and transfer the Client Data in accordance with this Contract;

8.2.2. the Client acknowledges and agrees that the Client Data may be transferred or stored outside the EEA or the country where the Client and the data subjects are located in order to carry out the Services and 21Digital's other obligations under this Contract;

8.2.3. the Client warrants that it is entitled to transfer the relevant Client Data to 21Digital having obtained the data subject's express consent so that 21Digital may lawfully

use, process and transfer the Client Data in accordance with this Contract on the Client's behalf;

8.2.4. the Client shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by DP Legislation; and

8.2.5. each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Client Data or its accidental loss, destruction or damage.

8.3. 21Digital shall:

8.3.1. only carry out processing of any of the Client Data on the Client's and any other lawful instructions given from time to time;

8.3.2. only transfer the Client Data to countries outside EEA that ensure an adequate level of protection for the rights of the data subject; and

8.3.3. promptly and fully notify the Client in writing of any notices in connection with the processing of any Client Data, including subject access requests, and provide such information and assistance as the Client may reasonably require.

8.4. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy shall be for 21Digital to use reasonable commercial endeavours to restore the Client Data which has been lost or damaged from the latest back-up of such maintained by the Client.

8.5. Except as expressly provided otherwise, this Contract does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any (non-personal) data.

9. INTELLECTUAL PROPERTY RIGHTS

9.1. The parties agree that, except as expressly provided to the contrary, this Contract does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights:

9.1.1. owned or otherwise vested in 21Digital prior to it being formed or which are licensed to and not owned by 21Digital including computer software; or

9.1.2. which are created by 21Digital in the course of providing the Services but which for the avoidance of doubt are generic in nature and capable of use from one client to the next and therefore not bespoke to or created specifically for the Client's requirements,

(‘Excluded IPRs’).

9.2. The Intellectual Property Rights in the Deliverables, shall with the exception of the Excluded IPRs, at the date on which 21Digital has been paid all Fees due to it by the Client under this Contract in full or (if later) on creation of the rights, vest in the Customer. 21Digital accordingly assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to the Customer.

10. INDEMNITY AND LIMITATION OF LIABILITY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

10.1. The Client shall indemnify 21Digital, keep 21Digital indemnified and hold 21Digital harmless against all Loss (including any direct, indirect, special or consequential Loss, loss of profit, loss of business, contract, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by 21Digital arising out of or in connection with:

10.1.1. the Client's breach of this Contract howsoever arising;

10.1.2. any wilful or negligent act or omission of the Client, its officers, employees, contractors or agents; and

10.1.3. the Client's use of the Services and any Deliverables.

10.2. Except as expressly and specifically provided in this Contract:

10.2.1. the Client assumes sole responsibility for results obtained from the use of the Services and the Deliverables, and for conclusions drawn from such use. 21Digital shall have no liability for any damage caused by errors or omissions in any information provided to 21Digital by the Client in connection with the Services, or any actions taken by 21Digital at the Client's direction; and

10.2.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract.

10.3. Nothing in this Contract excludes the liability of 21Digital:

10.3.1. for death or personal injury caused by 21Digital's negligence; or

10.3.2. for fraud or fraudulent misrepresentation.

10.4. Subject to clause 10.2 and clause 10.3:

10.4.1. 21Digital shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any Loss of an indirect, special or consequential nature howsoever arising under this agreement including any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss;

10.4.2. 21Digital's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the total of all Fees paid to 21Digital by the Client in cleared funds during the 12 months immediately preceding the date on which the claim arose; and

10.4.3. in no event shall 21Digital, its employees, agents and sub-contractors be liable to the Client for any Defects or to the extent that any alleged infringement of Intellectual Property Rights is based on:

(A) a modification of the Services or Deliverables by anyone other than 21Digital; or

(B) the Client's use of the Services or Deliverables in a manner contrary to the instructions given to the Client by 21Digital; or

(C) the Client's use of the Services or Deliverables after notice of the alleged or actual infringement from 21Digital or any appropriate authority; or

(D) the fraudulent or unauthorised use of any Service or Deliverables by the Client.

10.5. the Client's installation of any applications, utilities or other software programs or re-configuration of the Deliverables or Service (including, but not limited to, hardware, firmware, software, programming, configuration and service) or otherwise modifies or alters any of the foregoing.

10.6. In the defence or settlement of any claim, 21Digital may procure the right for the Client to continue using the Services and/or any Deliverables, replace or modify the Services and and/or any Deliverables so that they become non-infringing or, if such remedies are not reasonably available, terminate this Contract on 2 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.

10.7. The foregoing states the Client's sole and exclusive rights and remedies, and 21Digital's (including 21Digital's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights and confidentiality.

10.8. No employee or representative of 21Digital, other than a duly authorised officer, has any authority to bind 21Digital to any warranty or undertaking whatsoever other than that, if any, provided in this Agreement, or to vary the terms of this Agreement.

11. TERM AND TERMINATION

11.1. This Contract shall be for the Term commencing with the date on which the Contract is formed and (save where terminated earlier in accordance with clause 11.2) continuing in accordance with the relevant provisions of the applicable Service Schedule.

11.2. 21Digital may terminate this Contract (in full or in relation to any individual or combination of Service Schedule(s)) immediately by written notice to the Client in the event that:

11.2.1. the Client fails to pay any undisputed amounts due to 21Digital in relation to any Service(s);

11.2.2. the Client commits any breach of a material provision of this Contract that is irremediable or, if remediable, is not remedied by the Client within 14 days' of the Client's receipt of written notice from 21Digital specifying the breach and requiring its remedy;

11.2.3. any regulatory decision or governmental order requiring 21Digital to suspend the provision of the Service(s) or the Deliverables; or

11.2.4. the Client:

(A) 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(B) 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 its creditors 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 the Client;

(C) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business);

11.2.5. 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 Client 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;

11.2.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Client;

11.2.7. the holder of a qualifying floating charge over the assets of the Client has become entitled to appoint or has appointed an administrative receiver;

11.2.8. a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over its assets;

11.2.9. a creditor or encumbrancer of the Client 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 Client's assets and such attachment or process is not discharged within 14 days;

11.2.10. any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 11.2.

11.3. In any circumstance in which 21Digital may terminate any or any portion of this Contract, it may exercise its right to suspend performance of any of the Service(s).

11.4. On termination of this Contract by 21Digital under clause 11.2, all licences granted by 21Digital under this Contract shall terminate immediately.

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

11.6. Termination or expiry of this Contract 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 Contract which existed at or before the date of termination or expiry.

12. SUSPENSION OF SERVICES

12.1. Exercise by 21Digital of its right to suspend performance of its obligations under this Contract shall:

12.1.1. be without liability to the Client; and

12.1.2. not function as a waiver of any right of termination that 21Digital may have under this Contract.

12.2. Upon 21Digital's suspension of any Service to the Client under any of the foregoing clauses, 21Digital may, in addition to all other remedies that may be available to 21Digital, assess and collect from the Client any applicable liquidated damages.

13. NOTICES

13.1. All notices under this Contract shall be in writing and must be in English.

13.2. Notices shall be deemed to have been duly given:

13.2.1. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

13.2.2. at 9:00 am on the next Business Day, if transmitted by email; or

13.2.3. at 9:00 am on the 2nd Business Day following mailing, if mailed by national ordinary mail, postage prepaid, in each case addressed to the most recent address or email address notified to the other party.

14. MISCELLANEOUS

14.1. Force Majeure. Neither party shall have any liability under or be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 3 months, the non-affected party may terminate the Service(s) affected only by written notice to the other party.

14.2. Marketing. The Client agrees that 21Digital may refer to the Client and may briefly describe the Client's business in 21Digital's marketing materials and on its website. The Client grants 21Digital a limited licence to use any Client trade names and trade marks solely in connection with the rights aforesaid.

14.3. Severability. If any provision of this Contract is or becomes prohibited by law or is judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be modified to the minimum extent required in order to give its intended effect, else to the extent that this is not possible, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract without affecting any other circumstances of or the validity or enforcement of the remainder of this Contract.

14.4. No Waiver. Unless a party expressly waives its rights

in writing no delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Contract. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

14.5. Set Off. Where 21Digital has incurred any liability to the Client, whether under this Contract or otherwise, and whether such liability is liquidated or unliquidated it may set off the amount of such liability against any sum that would otherwise be due to it by the Client.

14.6. Entire Agreement. The parties agree that this Contract constitutes the entire agreement between the parties and the Client confirms that it has not entered into it on the basis of any representation that is not expressly incorporated into this Contract.

14.7. Third Party Rights. Except as expressly provided otherwise, this Contract shall not be enforceable by any third party in accordance with the Contracts (Rights of Third Parties) Act 1999.

14.8. Partnership. This Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary or other relationship between the parties.

14.9. Variation. This Contract may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

14.10. Transfer. This Contract is personal to the Client and the rights and obligations hereunder may not be assigned or transferred to a third party without the prior written approval of 21Digital. 21Digital may assign or transfer its rights and obligations hereunder without the Client's prior written consent.

14.12. Successors. This Contract shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Contract shall include its successors and permitted assignees.

14.13. Law & Jurisdiction. This Contract shall be governed by English law and disputes arising under or in relation to it or its subject matter shall be subject to the exclusive jurisdiction of England and Wales.

SERVICE SCHEDULE – WEB DESIGN AND DEVELOPMENT SERVICES

1. DEFINITIONS

1.1. Defined words and expressions used in this Service Schedule shall take the meaning given to them in the Terms, unless detailed below:

‘Acceptance’ the acceptance or deemed acceptance of the Website by the Client pursuant to paragraph 4;

‘Acceptance Date’ the date on which the Website is Accepted in accordance with paragraph 3;

‘Acceptance Tests’ the tests to be carried out on the Website as set out in paragraph 3 or as otherwise notified to the Client by 21Digital;

‘Non-Supplier Defect’ a defect (in any element of the Website including any plugins or its core) which is caused by an act or omission of the Client, or by one of the Client's sub-contractors or agents for whom 21Digital has no responsibility;

‘Project Plan’ the timetable in accordance with which the Supplier shall design and develop the Website as agreed in writing provided that any timescales shall be indicative and used as estimates only;

‘Service’ shall mean the design and development of the Website;

‘Sign-Off Sheet’ the sheet which 21Digital issues the Client with for signature in accordance with paragraph 3.5.1;

‘Specification’ means the agreed specification for the Website and its component parts as set out between the parties in writing from time to time and including any changes agreed between the parties;

‘Website’ means the website at the URL specified in the Proposal or otherwise agreed between the parties comprising all pages including graphics, audiovisual effects, software and any other material to be developed by 21Digital pursuant to the Client's requirements and which for the purposes of the Terms shall constitute the Deliverables.

2. SERVICE SCOPE AND DESCRIPTION

2.1. 21Digital shall design, develop and deliver the Website on and subject to the terms of this Service Schedule and in all material respects, in accordance with any Project Plan and Specification.

2.2. The Client acknowledges that 21Digital's ability to provide the Services materially in accordance with the Project Plan or otherwise is dependent upon the full, efficient and timely co-operation of the Client (which the Client agrees to provide), as well as the accuracy and completeness of any Materials provided to 21Digital. In the event of any delays in the Client's performance of its obligations, 21Digital may adjust the Project Plan, any agreed timetable or delivery schedule as reasonably

necessary.

2.3. Save that time for performance of its obligations in accordance with the Project Plan shall not be of the essence, 21Digital shall be given an extension of the timetable of any one or more of the stages in the Project Plan if one of more of the following events occurs:

2.3.1. a variation to the Website or the Specification is made at the Client's request; or

2.3.2. a delay is caused in whole or in part by an action or omission of the Client or its employees, agents or third-party contractors.

2.4. The Client shall be solely responsible for the accuracy of all text specifications drawings and illustrations submitted by 21Digital to the Client for checking and approval before the Services are further progressed and the Client accepts responsibility for final proof-reading and artwork approval, including transparencies, prints and illustrations whether or not the Client delegates this task to any partner or employee of 21Digital.

3. ACCEPTANCE OF WEBSITE

3.1. Once 21Digital has completed the design and development of the Website in accordance with the Project Plan and has notified the Client that it is ready to carry out the Acceptance Tests ('Initial Completion'), the Acceptance Tests shall be carried out.

3.2. The Acceptance Tests shall test compliance of the Website with any Specification.

3.3. At Initial Completion, 21Digital shall:

3.3.1. provide the Client with training on the use of the Website at its convenience and at the Client's premises (or where it reasonably deems that on-site training cannot be provided, 21Digital shall provide the Client with a user guide and remote training) and in which case the Client shall be required to provide all access, facilities and services reasonably required by 21Digital to enable it to perform the training;

3.3.2. make the Website available to the Client for inspection and the Client shall within 14 days (**‘Test Period’**) either approve or reject the Website as complying with the Specification.

3.4. Where the Client indicates that it rejects the Website as complying with the Specification it shall provide full particulars to 21Digital with reference to the relevant parts of the Specification and 21Digital shall acting wholly reasonably and in good faith notify the Client of its acceptance or rejection of such rejection. In the event that 21Digital:

3.4.1. agrees with such rejection, it shall carry out such remedial works as are appropriate and necessary and therefore represent the Website for retesting; or

3.4.2. disagrees with such rejection, it shall outline its reasons for such disagreement and provided that it is able to detail the Website's compliance with the Specification, Acceptance shall be deemed to have taken place, and if any rejection results from a Non-Supplier Defect, the Website shall be deemed to be Accepted notwithstanding such Non-Supplier Defect.

3.5. Acceptance of the Website shall occur or be deemed to have occurred:

3.5.1. when the Client has indicated that the Website has passed the Acceptance Tests by signing the Sign-Off Sheet;

3.5.2. in accordance with paragraph 3.4.2; or

3.5.3. when the Client uses any part of the Website for any revenue earning purposes or to provide any services to third parties (whether or not revenue earning) other than for test purposes; or

3.5.4. when the Client fails to reject the Website within the Test Period or within a period of 5 Business Days from the date on which 21Digital is ready to commence running any retests.

3.6. The procedure set out in this paragraph shall be repeated in respect of any further development works or remedial works agreed by the parties from time to time provided that where the Client rejects the Website on 3 separate occasions following defective remedial work being carried out by 21Digital, it may terminate this Contract.

3.7. Where any works relating to the Website are provided by 21Digital for whatever reason following the Acceptance Date, which shall include but not be limited to those which are necessitated by means of a Non-Supplier Defect, 21Digital reserves the right to levy an additional charge for such services at its then current fees and prices. 21Digital shall have no liability for any consequences or Losses arising out of or in connection with a Non-Supplier Defect.

4. USE OF THE WEBSITE

4.1. The Client shall not:

4.1.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Contract:

(A) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Website in any form or media or by any means; or

(B) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Website; or

(C) access all or any part of the Website in order to build a product or service which competes with the Website; or

4.1.2. subject to the remainder of this Contract, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit.

4.2. The Client shall use its best endeavours to prevent any unauthorised access to, or use of, the Website and, in the event of any such unauthorised access or use, promptly notify 21Digital.

4.3. 21Digital may include the statement "Created by 21Digital" on the homepage of the website, together with a link to its own website in a form to be agreed.

4.4. 21Digital shall enable the Client access to the Website in order to update information held on the Website.

4.5. The Client acknowledges that 21Digital has no control over any content placed on the Website by visitors to the Website and does not purport to monitor the content of the Website. 21Digital reserves the right to remove content from the Website where it reasonably suspects such content is Inappropriate Content. 21Digital shall notify the Client promptly if it becomes aware of any allegation that any content on the Website may be Inappropriate Content and the Client shall indemnify 21Digital for and against any Losses suffered or incurred by it arising out of any content uploaded to the Website by visitors to the Website (whether or not the same is classed as Inappropriate Content).

SERVICE SCHEDULE – DIGITAL MARKETING SERVICES

1. DEFINITIONS

1.1. Defined words and expressions used in this Service Schedule shall take the meaning given to them in the Terms, unless detailed below:

'Effective Date' the date on which the Contract is formed between the parties in accordance with clause 2 of the Terms;

'Marketing Services' the various digital marketing services required by the Client as more particularly described in the Proposal and delivered in accordance with paragraph 3;

'Marketing Strategy' the timetable (if any) in accordance with which 21Digital shall carry out the Marketing Services as agreed in writing provided that any timescales shall be indicative and used as estimates only; and

'Proofs' has the meaning given to it in clause 3.1.

2. COMMENCEMENT, TERM AND INCREASING FEES

2.1. The Marketing Services shall be provided by 21Digital to the Client from the Effective Date unless and until terminated in accordance with the Terms or by the Client providing 21Digital with no less than one month's written notice.

2.2. 21Digital may increase the Fees relating to the Marketing Services upon no less than one month's written notice to the Client which shall take effect under this Contract immediately upon expiration of such notice.

3. DELIVERY, PROOFS AND ACCEPTANCE

3.1. 21Digital shall provide the Marketing Services in accordance with any Marketing Strategy.

3.2. 21Digital may require the Client to approve certain proofs of literature produced in the course of providing the Marketing Services from time to time (**'Proofs'**).

3.3. Where 21Digital has completed the Proofs and deems it reasonably necessary to obtain the approval of the Client in advance of making use of the Proofs it shall disclose the Proofs to the Client.

3.4. The Client shall indicate whether it accepts the Proofs or rejects them, in which case it shall notify 21Digital of what changes it would like to be made to the Proofs prior to their use.

3.5. Where 21Digital:

3.5.1. agrees with the proposed changes notified by the Client in accordance with clause 3.4 it shall implement the same and proceed to make use of the Proofs; or

3.5.2. disagrees with the proposed changes notified by the Client in accordance with clause 3.4, it shall notify the Client of its professional reasons why and afford the Client with the opportunity to either agree with 21Digital or

maintain the changes that it wishes to make following which 21Digital shall proceed to make use of the Proofs.

3.6. The Client agrees and acknowledges that 21Digital makes no warranties, undertakings or guarantees with regards to results or sales as a result of the performance of the Marketing Services.

SERVICE SCHEDULE – HOSTING & MAINTENANCE SERVICES

1. DEFINITIONS

1.1. Defined words and expressions used in this Service Schedule shall take the meaning given to them in the Terms, unless detailed below:

'Additional Maintenance Services' has the meaning given in paragraph 4.2;

'Additional Rate' the rate of £80 + VAT per hour;

'Allocation' the allocated amount (in hours) of Maintenance Services to be provided to the Client by 21Digital each month as detailed in the Proposal;

'Call Out Rate' the rate specified in the Proposal;

'Commencement Date' the date on which the Contract is entered into in accordance with the Terms, or where 21Digital is engaged to design and develop the Website, the Acceptance Date (as defined in the 'Web Design and Development Services' Service Schedule);

'Hosting Services' the hosting services required by the Client as more particularly described in the Proposal and delivered in accordance with paragraph 3 below and such other procedures as are notified to the Client by 21Digital;

'Initial Term' has the meaning given in paragraph 2;

'Internet Service Provider' is the company that offers the Client access to the internet;

'Maintenance Services' the maintenance service required by the Client in connection with the Hosting Services as more particularly described in the Proposal and delivered in accordance with paragraph 4;

'Modifications' any modification to the Website which corrects faults, adds functionality or otherwise amends or upgrades the Website;

'Non-Critical Fault' any reproducible fault in the Website other than one which substantially hinders or prevents the Client from using a material part of the functionality of the Website;

'Normal Business Hours' means 08:30 to 17:30 on a Business Day;

'Subsequent Term' has the meaning given to it in paragraph 2; and

'Website' means the website the subject of the Hosting Services and the Maintenance Services and as referred to in the Proposal.

2. COMMENCEMENT, TERM AND INCREASING FEES

2.1. The Contract for the Hosting Services shall come into force on the Commencement Date and shall remain in force for a period of 12 months ('the Initial Term') and renew automatically for subsequent periods of 12 months at a time (each, a 'Subsequent Term'), unless terminated

earlier by either party in accordance with the Terms or where either party provides the other with no less than one month's notice in writing in advance of the end of the Initial Term or applicable Subsequent Term.

2.2. 21Digital may increase the Fees for the Hosting Services and the Marketing Services and the Additional Rate upon no less than one month's written notice to the Client which shall take effect under this Contract immediately upon the commencement of the Subsequent Term.

3. HOSTING SERVICES

3.1. 21Digital agrees to place the Website on computer server either owned or operated by 21Digital or which are owned by third parties and to which it is provided with access and allow storage of information received by the Client or from the general public on such computer server.

3.2. 21Digital will not be liable for any problems that arise that relate to or arise from the Internet Service Provider. Any Maintenance Services provided by 21Digital relating to such problems shall be charged at a fee stipulated by 21Digital.

3.3. The Client shall ensure that its machines are backed up in order to prevent losing any information and for the avoidance of doubt 21Digital shall not be liable for any Losses arising as a result of the failure to back up such machines.

3.4. It is the responsibility of the Client to ensure that adequate anti-virus and spam filters are installed relating to but not limited to their machines and servers. For the avoidance of doubt 21Digital shall not be liable for any Losses arising as a result of the failure to install adequate anti-virus and spam filters.

3.5. In addition to the obligations of the Client as otherwise specified in this Agreement, the Client shall be solely responsible for any information, programs and other information that the Client receives as a result of the use of the Hosting Services, including without limitation, the entire responsibility of any Losses of data, programs, breaches of security, viruses and disabling or harmful devices that the Client may download or otherwise experience as a result of the Client's use of the Hosting Services.

3.6. 21Digital shall use commercially reasonable endeavours to make the Website available 24 hours a day, seven days a week, except for maintenance (whether planned or unscheduled) provided that 21Digital has, in the circumstances, provided the Client with reasonable notice.

4. DESIGN ON TAP – MAINTENANCE AND UPDATES

4.1. Subject to the Allocation, the Maintenance Service shall be provided by 21Digital during Normal Business Hours and shall comprise:

4.1.1. a telephone help desk to provide first-line technical support to the Client in conjunction with the Website; and

4.1.2. the issuance of Modifications as and when required and in whatever form (including, in the case of Non-Critical Faults, by way of a local fix or patch of the Website or a temporary by-pass solution) in 21Digital's absolute discretion.

4.2. If the Client requires:

4.2.1. Maintenance Services in excess of the Allocation in any given month; or

4.2.2. on-site Maintenance Services,

('Additional Maintenance Services') 21Digital may provide the same at its option and the Client agrees and understands that such Maintenance Services shall be provided at the Additional Rate.

4.3. 21Digital shall have no obligation to provide the Maintenance Services or may do so at the Additional Rate where they are necessitated by reason of faults arising from misuse, incorrect use of or damage to the Website from causes (other than any act or omission by 21Digital) set out as follows or as otherwise provided for by this Service Schedule:

4.3.1. failure or fluctuation of electrical power;

4.3.2. failure to maintain the necessary environmental conditions for use of the Website;

4.3.3. use of the Website in combination with any equipment or software not provided by 21Digital or not designated by 21Digital for use with any Modification forming part of the Website, or any fault in any such equipment or software;

4.3.4. any breach of the Client's obligations under this Contract howsoever arising or having the Website maintained by a third party;

4.3.5. any Modification not authorised by 21Digital;

4.3.6. operator error;

4.3.7. 21Digital not being able to connect to the Client's network remotely; or

4.3.8. any on-site visits which transpire to have been necessitated by physical damage and external issues not related to Twenyo including network issues, computer problems or user error.

4.4. Provided that the Client shall not be permitted to carry any unused Allocation into a Subsequent Term, in the event that the Client shall have any Allocation remaining at the end of a given month it may carry such unused Allocation across to the next month.

4.5. Where any services are provided by 21Digital in relation to updating the Website where the same does not in 21Digital's reasonable and professional opinion qualify as a Modification, 21Digital reserves the right to levy an additional charge for such services at the Additional Rate.

5. MIGRATION OF HOSTING

5.1. In the event that the Hosting Services are being terminated in accordance with this Contract and the Client

wishes to migrate the hosting of the Website to a third party provider, 21Digital shall package the files applicable to the Website in order to hand this over to the relevant third party on the date of termination.

5.2. In the event that 21Digital is required to provide any services to the Client or otherwise in relation to the Website following the date of termination, the Client agrees that it shall pay 21Digital for such services at the Additional Rate.

