

1. **Definitions**

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"CreativeQ"** means Creative Q Limited, its successors and assigns or any person acting on behalf of and with the authority of Creative Q Limited.
- 1.3 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting CreativeQ to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 **"Incidental Items"** means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by CreativeQ in the course of it conducting, or supplying to the Client, any Services.
- 1.5 **"Services"** means all Incidental Items (including copy, any printed or virtual material, samples, brands, designs, drawings, images, graphics, advertising, publications, data, files, information, and/or other associated documentation and/or goods), Software or applications (whether supplied from a third party Software development company or where custom developed or programmed for the Client) and/or Services (which includes any advice or recommendations, website development, graphic design, consultancy, marketing assessment and planning, brand development, integration or strategies, analysis, project management or service/media sourcing, etc.) provided by CreativeQ to the Client at the Client's request from time to time (where the context so permits the terms 'Incidental Items' or 'Services' shall be interchangeable for the other).
- 1.6 **"SLA"** means the Service Level Agreement detailing the regular maintenance and/or repair Services (including any Incidental items where appropriate) to be carried out at the designated location and timeframes as agreed between the Client and CreativeQ.
- 1.7 **"SNT"** means any Social Network Tool being a social media platform and/or application which is accessible on the internet through the World Wide Web and which provides multimedia content via a graphical user interface (including, but not limited to Facebook, Twitter, LinkedIn, Pinterest, etc.).
- 1.8 **"Website"** means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.
- 1.9 **"Prohibited Content"** means any content on any media (including advertising, posts, comments, etc.) that:
 - (a) is, or could reasonably be considered to be, in breach of the Broadcasting Act 1989; the Consumer Guarantees Act 1993; or any other applicable law or applicable industry code; or
 - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
 - (c) is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights.
- 1.10 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.11 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**
- 1.12 **"Price"** means the price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between CreativeQ and the Client in accordance with clause 7 of this Contract.

2. **Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by CreativeQ.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 These terms and conditions are meant to be read in conjunction with CreativeQ's Service Level Agreement. If there are any inconsistencies between the documents then the terms and conditions contained in this document shall prevail.
- 2.5 The Client accepts and acknowledges that:
 - (a) the supply of Services on credit shall not take effect until the Client has completed a credit application with CreativeQ and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Services request exceeds the Client's credit limit and/or the account exceeds the payment terms, CreativeQ reserves the right to refuse delivery;
 - (c) any expected or estimated outcomes concerning increased sales or market share or penetration achieved by the Client derived from marketing activities undertaken by CreativeQ, expressed in consultation or estimates, are speculative and in no way constitute a guarantee. In addition, where the Client makes changes to their Website, social media pages or advertising campaign information without prior discussion with CreativeQ, any such changes may negatively affect any costs and results;
 - (d) Creative reserves the right not to undertake any Services, refuse to accept any content supplied by the Client, withdraw any advertisement or publication at any time for any reason (including where such, in CreativeQ's opinion is or may be unlawful, offensive, contains Prohibited Content, does not comply with clause 10.3, or is otherwise inappropriate), and Creative shall not be liable to the Client for any such action; and

(e) **SNT's performance;**

- (i) the display on the SNT does not guarantee the availability of any particular goods; therefore, all orders placed through the Client's Website as a result of any post or other communication posted shall be subject to confirmation of acceptance by the Client;
- (ii) the ability to post communications on a SNT may be unavailable from time to time due to regularly scheduled maintenance and/or upgrades by the SNT provider;
- (iii) there are inherent hazards in electronic distribution, and as such CreativeQ cannot warrant against delays or errors in posts appearing on any SNT;
- (iv) all SNT used in the provision of the Services are subject to the terms and condition of service of the third party provider and as such it is the Client's responsibility to be familiar with those terms and conditions;
- (v) in CreativeQ's use of the Client's SNT, CreativeQ is acting as the Client's agent and any liability arising from the use of the SNT account/s shall be the Client's responsibility; and
- (vi) with changes in technology, changes in internet use and SNT visiting patterns, particular SNT availability/life cycle, CreativeQ may suggest changes to the original proposal and recommend an alternative service. Any such suggestions and/or recommendations shall be communicated to the Client prior to implementation of any changes.

2.6 None of CreativeQ's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of CreativeQ in writing nor is CreativeQ bound by any such unauthorised statements.

2.7 Any advice, recommendations, information, assistance or service provided by CreativeQ in relation to Services provided is given in good faith, is based on information provided to CreativeQ, and CreativeQ's own knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services, human error is possible under these circumstances, and CreativeQ shall make all effort to offer the best solution to the Client.

2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

3.1 The Client acknowledges that CreativeQ shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to CreativeQ, that person shall have the full authority of the Client to order any Services, Incidental Items and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to CreativeQ for all additional costs incurred by CreativeQ (including CreativeQ's profit margin) in providing any Services, Incidental Items or variation/s requested thereto by the Client's duly authorised representative.

4. Fixed Term

4.1 Where this Contract is for ongoing Services (**Service Level Agreement- "SLA"**), the initial fixed Term ("**Term**") shall be specified as stated in Creative Q's SLA documentation as agreed between both parties and shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least thirty (30) days' required notice as defined in the SLA documentation prior to the expiration date of the initial term or any additional term.

4.2 Failure by the Client to maintain their SLA fees, as agreed shall allow Creative Q to reserve their right to suspend the Services in accordance with clause 23.4.

4.3 The Client acknowledges and accepts that the Price stated will remain fixed for an initial period of twelve (12) months from the date of this Contract and will then be subject to revision on the basis of the movement in the Consumer Price Index (CPI).

5. Errors and Omissions

5.1 The Client acknowledges and accepts that CreativeQ shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by CreativeQ in the formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by CreativeQ in respect of the Services.

5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of CreativeQ; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

6. Change in Control

6.1 The Client shall give CreativeQ not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by CreativeQ as a result of the Client's failure to comply with this clause.

7. Price and Payment

7.1 At CreativeQ's sole discretion the Price shall be either:

- (a) as indicated on any invoice provided by CreativeQ to the Client; or
- (b) the Price as at the date of delivery of the Services according to CreativeQ's current price list; or
- (c) (where the Client is on a "**SLA**"), the Client is required to pay an agreed amount for the on-going provision of the Services to the Client by Creative Q as stipulated in this Contract; or
- (d) CreativeQ's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) business days.

7.2 CreativeQ reserves the right to vary the Price:

- (a) if a variation to the plan of scheduled Services, or Client specifications is requested (including, but not limited to, additional work required due to hidden or unidentifiable difficulties not evident prior to commencement of the Services, accessing the SNT, internet disruptions or limited access, etc.); and

- (b) as a result of increases beyond CreativeQ's reasonable control in the cost of materials or labour (including, but not limited to, any variation as a result of fluctuations in currency exchange rates, increases to CreativeQ in the cost of taxes, levies, freight and insurance charges and increases in third-party network operator or supplier costs, etc.)
- 7.3 Variations will be charged for on the basis of CreativeQ's quotation, and will be detailed in writing, and shown as variations on CreativeQ's invoice. The Client shall be required to respond to any variation submitted by CreativeQ within ten (10) working days. Failure to do so will entitle CreativeQ to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7.4 At CreativeQ's sole discretion a deposit may be required.
- 7.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by CreativeQ, which may be:
- (a) on or before delivery of the Services;
 - (b) by way of instalments/progress payments in accordance with CreativeQ's payment schedule which may:
 - (i) for any Website development Services:
 - (A) thirty percent (30%) deposit due (of the project value) upon acceptance of the quotation; and
 - (B) CreativeQ may request progress payments of ten percent (10%) of the estimated total Website development payment at regular intervals where the Website development Services are provided over a month or longer period of time;
 - (C) any outstanding balance of the Website development payment will become due upon completion of the Website development Services or
 - (c) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by CreativeQ.
- 7.6 Payment may be made by electronic/on-line banking, monthly direct debit, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and CreativeQ.
- 7.7 Where payment is to be made by a Direct Debit Request ("DDR") arrangement only, as agreed between the Client and CreativeQ and shall be subject to:
- (a) a deduction falls due on a non-business day, it will be debited to the Client's account on the next business day following the scheduled withdrawal date;
 - (b) CreativeQ will give the Client not less than thirty (30) days written notice when changes to the initial terms of the arrangement are made. This notice will state any other changes to the initial arrangement;
 - (c) If the Client wishes to discuss any changes to the initial arrangement, then contact CreativeQ's representative directly. The changes may include:
 - (i) deferring the monthly deduction;
 - (ii) stopping an individual debit; or
 - (iii) suspending the DDR; or
 - (iv) cancelling the DDR.
- 7.8 CreativeQ may in its discretion allocate any payment received from the Client towards any invoice that CreativeQ determines and may do so at the time of receipt or at any time afterwards. On any default by the Client CreativeQ may re-allocate any payments previously received and allocated. In the absence of any payment allocation by CreativeQ, payment will be deemed to be allocated in such manner as preserves the maximum value of CreativeQ's Purchase Money Security Interest (as defined in the PPSA) in the Services.
- 7.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by CreativeQ nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to CreativeQ an amount equal to any GST CreativeQ must pay for any supply by CreativeQ under this or any other contract for providing CreativeQ's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 8. Reimbursable Expenses**
- 8.1 CreativeQ shall be reimbursed for all expenses reasonably and properly incurred in connection with the provision of the Services, except where such expenses are specifically stated in the quotation, or in writing by CreativeQ, as being non-reimbursable. All reimbursable expenses (e.g. travel, accommodation, communications, couriers, etc.) will be charged at the cost involved (excluding GST) to CreativeQ, plus an administration fee of ten percent (10%) thereof.
- 9. Nominated Consultants**
- 9.1 CreativeQ may (if they consider it appropriate to do so) recommend the engagement of third-party consultants, who shall be engaged by the Client at the Client's own expense. CreativeQ does not warrant the accuracy or quality of the consultant's work, or warrant that the recommendations of the consultants are appropriate or adequate, or are fit for their purpose, or that they are not given negligently. The Client agrees that they shall not make any demand on CreativeQ or commence any legal proceedings against CreativeQ, and CreativeQ shall have no liability, whether in negligence or otherwise, to the Client in relation to any services performed by the consultants.
- 10. Provision of the Services**
- 10.1 At CreativeQ's sole discretion delivery of the Services shall take place when the Services are supplied to the Client or the Client's nominated SNT account.
- 10.2 The Services are provided on the basis of specifications, information and instructions provided by the Client to CreativeQ (whether written or verbal). The Client acknowledges that it is their responsibility to ensure that such are detailed sufficiently to satisfy CreativeQ's requirements of interpretation and understanding, as once accepted by the Client, CreativeQ's quotation shall be deemed to interpret correctly those specifications, information and instructions. Therefore, CreativeQ shall not accept any liability for the supply of Services contrary to the Client's intention, or errors or omissions in the Services, due to insufficient or inadequate provision of detailed specifications, information and

- instructions by the Client or oversight or misinterpretation thereof, and CreativeQ may charge the Client additional costs incurred thereby in remedying the Services, and if reasonably practical, will notify the Client of such costs before they are incurred and the Client agrees to them.
- 10.3 Furthermore, the Client warrants that all such content or materials supplied to CreativeQ to be used for the provision of the Services shall:
- (a) be true and correct in every particular; and
 - (b) does not contain Prohibited Content; and
 - (c) be non-political and non-religious by nature, and suitable for viewer of all ages; and
 - (d) not be, nor contain, anything that is defamatory of any person or is indecent or obscene; and
 - (e) complies with all laws, regulations, codes of practice, guidelines and any standards applicable to the advertising industry and as determined by any relevant regulatory agency or industry self-regulatory body (including, but not limited to, the Fair Trading Act, GSPR and Privacy legislation and the Advertising Codes of Practice of the Advertising Standards Authority (ASA)); and
 - (f) does not infringe copyright, trademark or any other legal rights of another person and/or entity (including the name and image of any person without their consent, etc.); and
 - (g) does not contain anything which may give rise to any cause of action by a third against CreativeQ (including, but not limited to, material that may cause damage or injury to any person and/or entity); and
 - (h) is not false or misleading and is true in substance and in fact; and
 - (i) not contain nor constitute a statement that is misleading or deceptive or likely to deceive or to mislead or which is otherwise in breach of a provision of the Fair Trading Act or any other applicable legislation;
 - (j) be in the form, and delivered up to CreativeQ by the date, specified thereby. If the Client fails to adhere to this sub-clause, CreativeQ shall not be liable to the Client in the event CreativeQ is unable to provide the Services.
- 10.4 CreativeQ may supply Incidental Items to the Client where it is required for the provision of Services, and
- (a) delivery of the Incidental Items is taken to occur at the time that CreativeQ (or CreativeQ's nominated carrier) delivers the Incidental Items to the Client's nominated address, even if the Client is not present at the address; and
 - (b) at CreativeQ's sole discretion, any costs of delivery shall be in addition to the Price; and
 - (c) CreativeQ may deliver the Incidental Items in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions; and
 - (d) risk of damage to, or loss of, the Incidental Items passes to the Client on delivery, and the Client must insure the Incidental Items on, or before, delivery.
- 10.5 Whilst CreativeQ shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties (subject to CreativeQ's normal service hours of 8.30am to 5:30pm on business days), the Client acknowledges that any time specified thereby for provision of the Services is an estimate only and CreativeQ will not be liable for any loss or damage incurred by the Client as a result of any delay. In the event that CreativeQ is unable to provide the Services as agreed solely due to any action or inaction of the Client then CreativeQ shall be indemnified from any liability for any resulting failure to provide the Services and/or entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 10.6 **Normal Working Hours:**
- (a) Services may be requested outside of the hours of 8.30am to 5:30pm Monday through Friday, and
 - (b) including all public holidays by prior arrangement, but may be subject to additional charges.
11. **Risk and Limitation of Liability for Client Data**
- 11.1 When quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other good copy, any extra work or cost caused by any variation by the Client of the original instructions or by the manuscript copy being, in CreativeQ's opinion, poorly prepared or by the Client's requirements being different from those originally submitted or described, then the cost of such variations may be charged to the Client and shown as extras on the invoice.
- 11.2 Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice.
- 11.3 Unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at its request for the work.
- 11.4 Where the performance of any contract with the Client requires CreativeQ to obtain services from a third party, the contract between CreativeQ and the Client shall incorporate and shall be subject to the conditions of supply of such services to CreativeQ (including, but not limited to registering the Client's business and/or set up SNT accounts where required), and the Client shall be liable for the cost in full including CreativeQ's margin of such Services.
- 11.5 Whilst every care is taken by CreativeQ to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading and/or revision of the proposed Services of any media communications prior to posting of the same to any SNT and/or revision of the proposed Services including Website design. CreativeQ shall be under no liability whatsoever for any errors not corrected by the Client in the final proof reading/revision.
- 11.6 Any changes and comments as a result of proof reading/revision undertaken by the Client shall be provided to CreativeQ in one (1) complete brief and not multiple email notifications. Any extended revisions outside of this scope shall be charged at CreativeQ's hourly rate.
- 11.7 Any change or correction to any video, photographs and/or artwork supplied by the Client which is deemed necessary by CreativeQ to ensure correctly finished work shall be invoiced as an extra.
- 11.8 The Client shall provide CreativeQ with data in the following formats:
- (a) for text, files shall be in an electronic format as standard text (.txt) or Word (.doc) on a USB or via email;
 - (b) for imaged, in an electronic format as prescribed by CreativeQ on a USB or via email with the images of a suitable quality applicable for the use intended and without any subsequent image processing being required. CreativeQ shall not be responsible for the quality of images scanned from printed materials;
 - (c) additional expenses may be charged to the Client for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing or data entry services.
- 11.9 The Client acknowledges and agrees that CreativeQ shall not be held responsible or liable for:
- (a) anything related to the SNT or any other Services provided; and/or

- (b) any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of CreativeQ.
- 11.10 CreativeQ, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by CreativeQ to the Client.
- 11.11 All media releases and public announcements by either party relating to these terms and conditions, or the Services (including subject matter and related documents), shall be co-ordinated with the other party and approved jointly by the party prior to release.
- 11.12 CreativeQ shall not be held responsible for the use of Services as referred to in by media, once information approved by the Client has been submitted to the media.

12. Client's Acknowledgement

- 12.1 The Client acknowledges that payments to third parties for general advertising, social media advertising and lead generation costs shall be the Client's responsibility. Any budgets for such costs shall be set with in consultation between CreativeQ and the Client
- 12.2 The Client will, in addition to any other obligations expressed in this Contract, have the following responsibilities:
 - (a) provision of all content (including data, logos, designs and/or graphic and related materials) to be incorporated into the SNT communications and/or Website within five (5) business days of being requested by CreativeQ;
 - (b) provision of any other information, ideas or suggestions which are to be expressly considered by CreativeQ in developing the SNT communications; and
 - (c) to ensure that content supplied to CreativeQ does not contain Prohibited Content, a link to any website that contains Prohibited Content, or any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the SNT.
- 12.3 CreativeQ will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the SNT communications which is attributable to:
 - (a) incorrect information provided by the Client, either pursuant to this clause or otherwise; or
 - (b) failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or
 - (c) any third-party products and/or services used by CreativeQ in placing the SNT communication.

13. Website Development

13.1 *CreativeQ's Responsibilities:*

- (a) upon acceptance of CreativeQ's quotation/proposal, and in accordance with this Contract, CreativeQ will:
 - (i) use its best endeavours to develop the Website in accordance with the Client's instructions and specifications including development stages; and
 - (ii) to the extent specified in the Client's instructions and specifications, negotiate and procure any third-party agreements on behalf of the Client;
- (b) the Client acknowledges that the development of the Website by CreativeQ is based upon current technology platforms (e.g. internet browsers, mobile, android, social media platform, etc.), and therefore CreativeQ cannot guarantee that Website features and /or content will display correctly, and that the overall visual experience will be the same, for use by either superseded or presently undeveloped technology;
- (c) upon CreativeQ receiving payment in full, CreativeQ shall provide the Client with the last backup of the Website and associated data and ensure the Website is 'live' and visible on the internet and/or social media platform;
- (d) CreativeQ shall advise the Client of all third party software, platforms and/or social media platform that the Client is recommended to have in place to assist the Client in setting up those accounts with the Client's details and billing information; and
- (e) all software and components not developed by CreativeQ retain the original licence and terms associated with that software.

13.2 *Client's Responsibilities:*

- (a) the Client will ensure that CreativeQ is given such information and assistance (including access to computer systems, hosting account, disk space, create databases and applications, and other locations to complete a branding or other project) as CreativeQ reasonably requires to enable CreativeQ to construct and maintain the Website; and
- (b) when approval is sought or required from the Client following completion of a development stage, the Client will not delay the approval of that development stage beyond fourteen (14) days (time being of the essence) of being requested unless otherwise agreed to by CreativeQ in writing. In the event of delays beyond this time frame, then CreativeQ shall be entitled to charge a "holding fee" of an amount to be determined by CreativeQ.; and
- (c) subject to clause 23.4 the Client shall supply access to any computer system, usernames and passwords required to remove data and/or sites for failure to comply with these terms and conditions; and
- (d) it shall be the Client's responsibility to ensure that any specific requirements they may have for mobile web browsers is included in the brief, as, unless otherwise specified therein, the choice of web browsers and technology used in the development of the Website shall be at the sole discretion of CreativeQ. In the event that additional Services are requested, or required (as per clause 13.1(b)), in order to meet any specific requirements for mobile web browsers, after CreativeQ has commenced work on the Website, shall be treated as a variation to the Price, and a strict estimation of further work required shall be submitted to the Client for approval before proceeding with the variation work; and
- (e) CreativeQ will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Website which is attributable to any third-party products and/or services used by CreativeQ in creation of the Website and/or social medial platform.

13.3 *Domain Registration:*

- (a) where CreativeQ is to register a domain name on the Client's behalf, CreativeQ cannot guarantee the availability of the domain name, nor assume a successful registration or such a name.
- (b) CreativeQ will not be responsible for the renewal of any domain name registration unless specifically requested to do so by the Client.
- (c) the Client will be responsible for complying with all terms and conditions relating to any registered domain name, such as may be required by the 'Registry' that is responsible for administering the registration of such domain name.

13.4 Client's Property and Materials:

- (a) graphic files should be supplied in an editable, vector digital format and photographs in a high resolution digital format. If the Client chooses to purchase stock photographs, CreativeQ can suggest stock libraries; and
- (b) in the case of property and materials left with CreativeQ without specific instructions, CreativeQ shall be free to dispose of them at the end of twelve (12) months after their receiving them and to accept and retain the proceeds, if any, to cover their own costs in holding and handling them; and
- (c) where materials or equipment are supplied by the Client, CreativeQ accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.

13.5 Maintenance:

- (a) subject to sub-clause (b), CreativeQ will provide the Maintenance Services in accordance with the maintenance terms set out in CreativeQ maintenance schedule; and
- (b) the Client will procure all necessary authorisations, licences and consents to enable CreativeQ to have access to the Website in order to provide the Maintenance Services; and
- (c) should the Client during development of or after handover of the Website, attempt to update, edit or alter the Website pages, infrastructure, source files or the Website's architecture, time that CreativeQ provides to repair pages shall be treated as additional work.

13.6 Public Access:

- (a) the Client understands that by placing information on the Website, such information may be accessible to all internet users. CreativeQ does not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity; and
- (b) the Client assumes full responsibility for their use of the Services, and it is the Client's sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by CreativeQ, or on the internet generally.

14. Content and Google AdWords Marketing

- 14.1 The Client acknowledges and accepts that whilst CreativeQ shall conduct a plagiarism check of text, CreativeQ shall not be liable for any loss, damage or costs incurred by the Client for use of such text.
- 14.2 Where an error occurs in the copy created by CreativeQ's writers, CreativeQ shall correct the error on posts created at no extra cost to the Client, however this error shall not be deemed to be a breach in terms of this contract.
- 14.3 Where blog content provided by the Client has errors which require the post to be removed from the Website, the Client acknowledges that such removal may:
 - (a) affect other campaigns including, but not limited to paid traffic campaigns which were linked to that post; and
 - (b) cause down time whilst CreativeQ remedies the system.
- 14.4 The Client acknowledges that CreativeQ incurs expenses and uses its expertise and intellectual property where marketing campaigns are created for the Client specifically via Google AdWords.
- 14.5 Where the Client requests CreativeQ to pause a marketing campaign set up and managed by CreativeQ under the Google AdWords format, then the Client shall be responsible to continue payment of CreativeQ's monthly management fee.

15. Search Engine Optimisation (SEO)

- 15.1 Although CreativeQ shall use their knowledge and experience to gain the best results possible, CreativeQ gives no guarantee of the quality of visitor or the position/page rank or volume of visits to the Website, or warranty that the Website will be effective in promoting the Client's business or result in any increase in sales of the products/services of the Client. Periodic reporting will be sent to the Client's nominated email address, at the sole discretion of CreativeQ.
- 15.2 The Client accepts that a SEO may change their policies and systems at any time and such, CreativeQ shall not be held liable for any fluctuations, changes or removal of your listing from a SEO.

16. Defective Services

- 16.1 Any alleged fault, defect, shortage in quantity, errors, omissions or failure to comply with the description or quote of the Services which the Client detects must be reported to CreativeQ as soon as is practically possible. Any emails or telephone messages which are received outside CreativeQ's normal business hours will be processed the following business day. The Client shall afford CreativeQ an opportunity to inspect the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 16.2 For defective Services, which CreativeQ has agreed in writing that the Client is entitled to reject, CreativeQ's liability is limited to either (at CreativeQ's discretion) rectifying the Services or re-providing the Services, provided that the Client has complied with the provisions of clause 16.1.

17. Compliance of Laws

- 17.1 The Client and CreativeQ shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities in the country where the Services are being provided or as per guidelines on any SNT. Furthermore, CreativeQ warrants that any Services and/or content produced are fully compliant with said statutes, regulations and bylaws and SNT requirements.
- 17.2 The Client shall obtain (at the expense of the Client) all licenses and/or approvals pertaining to materials to be used in the communication copy and where required, any release documentation for the use of any digital imagery which may include people.

18. Confidentiality

- 18.1 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent.

- 18.2 The quotation and the information contained in the quotation or any other schedule provided by CreativeQ to the Client is done so on a “commercial in confidence” basis thereby, the Client agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of CreativeQ.
- 18.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party’s request, unless required by law to retain it.
- 18.4 Confidential Information excludes information:
- (a) generally available in the public domain (without unauthorised disclosure under this contract); or
 - (b) required by law, any stock exchange or regulatory body to be disclosed; or
 - (c) received from a third party entitled to disclose it; or
 - (d) that is independently developed.
- 18.5 The obligations of this clause 18 shall survive termination or cancellation of this Contract.

19. Title

- 19.1 CreativeQ and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid CreativeQ all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to CreativeQ in respect of all contracts between CreativeQ and the Client.
- 19.2 Receipt by CreativeQ of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then CreativeQ’s ownership or rights in respect of the Incidental Items shall continue.
- 19.3 It is further agreed that:
- (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to CreativeQ immediately upon request by CreativeQ;
 - (b) the Client holds the benefit of the Client’s insurance of the Incidental Items on trust for CreativeQ and must pay to CreativeQ the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of CreativeQ;
 - (d) the Client irrevocably authorises CreativeQ to enter any premises where CreativeQ believes the Incidental Items are kept and recover possession of the Incidental Items.

20. Personal Property Securities Act 1999 (“PPSA”)

- 20.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Incidental Items and/or collateral (account) – being a monetary obligation of the Client to CreativeQ for Services – that have previously been supplied and that will be supplied in the future by CreativeQ to the Client.
- 20.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which CreativeQ may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, CreativeQ for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of CreativeQ.
- 20.3 CreativeQ and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 20.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 20.5 Unless otherwise agreed to in writing by CreativeQ, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 20.6 The Client shall unconditionally ratify any actions taken by CreativeQ under clauses 20.1 to 20.5.
- 20.7 Subject to any express provisions to the contrary (including those contained in this clause 20), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

21. Security and Charge

- 21.1 In consideration of CreativeQ agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 21.2 The Client indemnifies CreativeQ from and against all CreativeQ’s costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising CreativeQ’s rights under this clause.
- 21.3 The Client irrevocably appoints CreativeQ and each director of CreativeQ as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 21 including, but not limited to, signing any document on the Client’s behalf.

22. Intellectual Property

- 22.1 Where CreativeQ has designed, drawn or developed Services (including the Website) for the Client, CreativeQ retains full intellectual property ownership of CreativeQ’s proprietary software, design, code, materials, source code of all images and design, routines and Services, including the copyright in any designs and drawings and documents or discovered during the provision of the Services, and CreativeQ hereby grants to the Client an irrevocable, non-exclusive and non-transferable worldwide licence to use CreativeQ’s materials, routines and Services solely in relation to the operation of the Client’s own presentation and functioning of the Website, conditional upon the Client fulfilling their obligations under this Contract (including, but not limited to, the full payment of the Price). Furthermore, the Client shall not have any right to use open source software or CreativeQ’s intellectual property for any other purpose.

- 22.2 CreativeQ shall retain property ownership of:
- (a) any designs not approved by the Client, and later offer the Client the right to purchase a licence to use such non-approved designs; and
 - (b) all photography and video audio filmed and/or created by and for CreativeQ.
- 22.3 All Flash, PHP, Java Script, HTML and Dynamic HTML coding and other supplied code (if any) remains the intellectual property of CreativeQ. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.
- 22.4 The Client warrants that all designs, specifications or instructions given to CreativeQ will not cause CreativeQ to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify CreativeQ against any action taken by a third party against CreativeQ in respect of any such infringement.
- 22.5 The Client hereby authorises CreativeQ to utilise images of the Services created by CreativeQ in advertising, marketing, or competition material by CreativeQ including, but not limited to:
- (a) the Client permitting CreativeQ to place a small credit on any printed material (i.e. brochures), exhibition displays, advertisement and/or link to CreativeQ's own website on the Client's Website, which shall usually be in the form of a small logo or line of text placed towards the bottom of the page;
 - (b) allowing CreativeQ to place websites and other designs, along with a link to the Client's Website on CreativeQ's own website for demonstration purposes and to use any designs in CreativeQ's own publicity.
- 23. Default and Consequences of Default**
- 23.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at CreativeQ's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 23.2 If the Client owes CreativeQ any money the Client shall indemnify CreativeQ from and against all costs and disbursements incurred by CreativeQ in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CreativeQ's collection agency costs, and bank dishonour fees).
- 23.3 Further to any other rights or remedies CreativeQ may have under this Contract, if a Client has made payment to CreativeQ, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by CreativeQ under this clause 23, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 23.4 Without prejudice to any other remedies CreativeQ may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions CreativeQ may, at their sole discretion:
- (a) suspend or terminate this Contract and/or any of the Services without notice or refund;
 - (b) make an additional charge to the Client; or
 - (c) block access to any part of the Services.
- 23.5 Without prejudice to CreativeQ's other remedies at law CreativeQ shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to CreativeQ shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to CreativeQ becomes overdue, or in CreativeQ's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by CreativeQ;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 24. Cancellation**
- 24.1 Either party may, terminate these terms and conditions or cancel provision of the Services:
- (a) prior to the commencement of the Services, in the event that after consultation with the Client, CreativeQ determines it is not technically, commercially or operationally feasible to provide the Services to the Client;
 - (b) if a Fixed Term is specified, at any time after the end of the Fixed Term by giving one (1) months' notice to the other party;
 - (c) failure to give notice of intention to cancel at least one (1) month prior to the expiration date of the Fixed Term, the Fixed Term shall automatically renew on a monthly basis, unless cancelled by way of the Client providing CreativeQ with one (1) months' notice.
- 24.2 CreativeQ may, in addition to their right to cancel under clause 24.1.
- (a) do so at any time:
 - (i) prior to the commencement of the Services, by giving notice to the Client. On giving such notice CreativeQ shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to CreativeQ for Services already performed. CreativeQ shall not be liable for any loss or damage whatsoever arising from such cancellation; or
 - (ii) in the event the Client materially breaches these Terms and Conditions, and such breach is not capable of remedy.
- 24.3 In the event of the premature termination of this Contract (including by notification from the Client, (at least one (1) month prior to the expiration date of the Contract term), or as a result of default, but excluding any breach or termination of this Contract by CreativeQ), the Client shall be responsible for the immediate payment of the following sums:
- (a) all monies due and payable up to the date of termination whether periodic or a Fixed Term, (noting applicable rates may change if the Contract is shorter than that noted in the Quotation); and
 - (b) all other sums owing by the Client under this Contract directly as a result of the default and termination of this Contract, which shall be calculated on the basis of any substantiated costs reasonably incurred by CreativeQ, or a minimum of twenty percent (20%) of the remainder of the Price under this Contract, whichever is the lesser, where a Fixed Term applies (to cover such costs imposed by CreativeQ third party suppliers that form part of, this Contract, without any margin added by CreativeQ thereto).
- 25. Employees of CreativeQ /Non Solicitation**
- 25.1 The Client agrees that during the term of the contract and for a period of six (6) months following the termination of the contract for any reason, the Client will not:

- (a) attempt to encourage or persuade any contractor/s, employee or consultant of CreativeQ to terminate their contract or employment with CreativeQ or utilise in any way an employee or past employee of CreativeQ (other than through CreativeQ); and
- (b) the Client acknowledges that the restraints are fair and reasonable for the proper preservation of the goodwill of the business of CreativeQ.
- 25.2 The Client agrees that if clause 25.1 is contravened the Client agrees to pay a placement fee equal to fifteen percent (15%) of the employee's annual salary as a fee as agreed by the parties prior to the appointment of the candidate. The Client agrees that this placement fee is also applicable if the Client engages CreativeQ's employees through a different labour hire company.
- 26. Limitation of Liability and Indemnity**
- 26.1 CreativeQ accepts no liability whatsoever for any defect, error or omission in any Services approved by the Client, and will not be responsible for any costs or losses incurred by the Client by reason of any error in the Services (including, but not limited to, offering any refund or credit).
- 26.2 The Client agrees to indemnify CreativeQ, its employees, agents and affiliates, and their employees and agents against any action, claim, loss or expense arising from the production of Incidental Items, Website and/or publication of the Services, cancellation of, or failure to produce the Incidental Items, Website and/or publish any Services, and all costs, losses and expenses suffered or incurred by CreativeQ, its employees, agents and affiliates, and their employees and agents as a result of any breach by the Client of these terms and conditions, or any other agreement between the Client and CreativeQ.
- 26.3 The Client acknowledges that, due to the nature of digital display, technical difficulties may arise which could prevent the provision of the Services; and the Client, therefore, agrees to indemnify CreativeQ against any costs or losses incurred by the Client as a result of this.
- 27. Privacy Policy**
- 27.1 All emails, documents, images or other recorded information held or used by CreativeQ is Personal Information as defined and referred to in clause 27.3 and therefore considered confidential. CreativeQ acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). CreativeQ acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by CreativeQ that may result in serious harm to the Client, CreativeQ will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 27.2 Notwithstanding clause 27.1, privacy limitations will extend to CreativeQ in respect of Cookies where transactions for purchases/orders transpire directly from CreativeQ's website. CreativeQ agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to CreativeQ when CreativeQ sends an email to the Client, so CreativeQ may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via CreativeQ's website.
- 27.3 The Client authorises CreativeQ or CreativeQ's agent to:
- (a) access, collect, retain and use any information about the Client;
- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by CreativeQ from the Client directly or obtained by CreativeQ from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 27.4 Where the Client is an individual the authorities under clause 27.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 27.5 The Client shall have the right to request CreativeQ for a copy of the Personal Information about the Client retained by CreativeQ and the right to request CreativeQ to correct any incorrect Personal Information about the Client held by CreativeQ.
- 27.6 The Client can make a privacy complaint by contacting CreativeQ via e-mail. CreativeQ will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.
- 28. Service of Notices**
- 28.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 28.2 A notice served or other document delivered on a day which is not a business day is deemed served or as applicable delivered, at 8.30am on the first business day after such day.

- 28.3 A notice served or other document delivered on a day which is not a business day is deemed served or as applicable delivered, at 8.30am on the first business day after such day.
- 28.4 For the purposes of clauses 28.2 and 28.3 the term "business day" shall mean any day other than a Saturday, Sunday or public holiday in Tauranga, New Zealand.

29. Trusts

- 29.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not CreativeQ may have notice of the Trust, the Client covenants with CreativeQ as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of CreativeQ (CreativeQ will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

30. Jurisdiction

- 30.1 The Website (excluding any linked third party sites) is controlled by CreativeQ from their principal business premises in New Zealand. It can be accessed from countries around the world to the extent permitted by the Website. As each country has laws that may differ from New Zealand, by accessing this Website, the Client agrees that the laws and statutes of New Zealand shall apply to any dealings, actions or claims arising out of, or in relation to, this Contract, or the Client's use of the Website, irrespective of any conflict with any laws and statutes applicable to the Client's country of domicile.
- 30.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand in which the Services were provided by CreativeQ to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction of the courts will be subject to the Tauranga Courts in which CreativeQ has its principal place of business, and that any legal proceedings will be conducted in English.
- 30.3 CreativeQ makes no representation that Services offered through the Website are appropriate, available or suitable for use in countries outside of New Zealand, and accessing and/or utilising any content from, or through, the Website which is illegal in your country of domicile is strictly prohibited.

31. General

- 31.1 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Consumer Guarantees Act or the Fair Trading Act of New Zealand (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable. If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by CreativeQ to the Client.
- 31.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 31.3 CreativeQ shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by CreativeQ of these terms and conditions (alternatively CreativeQ's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 31.4 CreativeQ may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 31.5 The Client cannot licence or assign without the written approval of CreativeQ.
- 31.6 CreativeQ may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of CreativeQ's sub-contractors without the authority of CreativeQ.
- 31.7 The Client agrees that CreativeQ may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for CreativeQ to provide Services to the Client.
- 31.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 31.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.