

SO Design Consultancy Limited

SO Design Consultancy Limited is a private limited company, registered in England & Wales under number 05268928; its registered office is Global House, 303 Ballards Lane, London, N12 8NP; its trading address is 6 Kenwood House, 74 Wellington Road, Enfield EN1 2NZ; its VAT number is 814883704; its email address is info@so-design.net and its telephone number is +44(0) 20 8373 0006.

Your attention is drawn in particular to the provisions of clauses 3.9, 5 and 10.

1. INTERPRETATION

1.1 In this agreement, the following definitions apply:

Business Day any day other than a Saturday, Sunday or public holiday in England.

Digital Materials any materials that are prepared or generated pursuant to the provisions of the Services and provided to you (other than drafts, specimens, samples and prototypes) in electronic form or otherwise made available for you and/or the public to access from our servers.

Digital Warranty as defined in clause 5.7.

Digital Warranty Period as defined in clause 5.7.

Fees as defined in clause 8.1.

Force Majeure Event as defined in clause 11.

Intellectual Property Rights any and all intellectual property rights including all patents, rights to inventions, copyrights and related rights, all other rights in the nature of copyright, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered of whatever nature whenever and howsoever arising) and all applications for the same, rights to apply for and/or renew the same, extensions and revivals of the same and all similar or equivalent rights or forms of protection which subsist or may subsist, now or in the future, anywhere in the world, including the right to sue for and recover damages for past infringements.

Hosting Services as defined in clause 3.6.

Materials the Physical Materials and/or the Digital Materials, as the context requires.

Operating Environments one or any of the operating or browser environments in respect of the Digital Materials concerned specified in the Statement of Work (subject to clause 4).

Physical Materials any physical materials that are prepared or generated pursuant to the provision of the Services and provided to you (other than drafts, specimens, samples and prototypes), whether such materials are printed or are in some other durable medium.

Purpose unless otherwise expressly agreed by us in writing, your internal business purposes, including the marketing and promotion of your business.

SEO Services as defined in clause 3.8.

Services the services set out in the Statement of Work (subject to clause 4).

Statement of Work the statement of work signed by you which incorporates these Terms.

Specification the specification of the Services set out in the Statement of Work (subject to clause 4).

Termination Date as defined in clause 9.7.

Terms these terms and conditions.

Warranty as defined in clause 5.1.

Warranty Period as defined in clause 5.1.

we, us or our SO Design Consultancy Limited (No. 05268928).

you or your the client whose details are set out on the front page of the Statement of Work.

1.2 In this agreement, the following rules of interpretation apply:

1.2.1 a **person** includes a natural person and bodies corporate or unincorporate (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors and permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms **including, include, in particular**, the letters **eg** or any similar words or expressions shall be construed as illustrative only and shall not limit the sense of the words preceding those terms;

1.2.5 a reference to **writing or written** includes faxes and e-mails; and

1.2.6 words in the singular include the plural and vice versa; words importing a gender shall import all genders.

2. **BASIS OF CONTRACT**

2.1 A quotation for services given by us shall not constitute an offer capable of acceptance by you. The Statement of Work is not an offer capable of acceptance by you and an agreement shall only come into force in accordance with this clause 2.

2.2 This agreement is comprised of the Terms and the Statement of Work. In the event of any conflict between the Terms and the express terms of the Statement of Work, then the express terms of the Statement of Work shall prevail.

2.3 This agreement shall come into effect only after (i) the Statement of Work has been signed by each party and duly completed; or (ii) (if sooner) after you have confirmed in writing or orally that you agree to the Statement of Work and we have confirmed in writing that you have agreed the Statement of Work.

2.4 The terms of this agreement apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice and/or course of dealing.

2.5 Any samples, drawings, descriptive matter, or advertising issued by us and any descriptions or illustrations contained in our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of this agreement or any other contract between you and us for the sale or procurement of Materials and/or Services and/or otherwise.

2.6 We do not warrant that the Statement of Work corresponds with your brief to us (and any such warranty is hereby excluded). By signing the Statement of Work and/or agreeing the Statement of Work in accordance with clause 2.3 you warrant that you have carefully read the Statement of Work and that the Statement of Work accurately reflects the specifications and services that you would like us to perform (whether or not it corresponds with any earlier discussions, briefs, correspondence and/or instructions).

3. **SERVICES**

3.1 Subject to you paying us the Fees, we will use reasonable care and skill in providing the Services and we will use reasonable endeavours to perform the Services within the time scales (if any) set out in the Statement of Work, however, dates quoted are approximate only and time is not of the essence. You agree to help us by promptly making available information that we request. We shall not be liable for any delay in providing the Services and/or failure to provide the Services to the extent caused by a Force Majeure Event or your failure to provide us with requested information in a timely fashion.

3.2 If you provide any content to be used in the Materials you agree that you will not provide (and you hereby warrant that you have not provided) any content which:

3.2.1 is or is likely to be considered defamatory, offensive, discriminatory and/or illegal;

3.2.2 if used in the Materials for the Purpose and/or by us for the purpose of performing the Services would or would likely infringe the Intellectual Property Rights of any third party,

and you hereby indemnify us in respect of any and all costs, expenses (including legal costs on an indemnity basis), claims, demands, actions and/or proceedings which may arise as a result of your breach of this clause 3.2.

Third party works

3.3 It may be necessary for us to incorporate the works of a third party in the Materials. Where either you or we consider this necessary we will notify you of our proposals and any terms that the third party concerned may have in relation to their Intellectual Property Rights in such works. If you agree to the use of such works you agree to comply strictly with the terms of any licence granted in respect thereof. We do not warrant that any works of third parties do not infringe the Intellectual Property Rights of any third party.

Operating Environments

3.4 The following terms shall apply in relation to Operating Environments:

3.4.1 if an Operating Environment is specified in the Statement of Work, we only refer to the release specified and not any past or future releases or versions. If the 'latest' version (or any similar language) of an Operating Environment is specified in the Schedule of Work, this refers to the version of such Operating Environment that is generally released to the public on the date of this agreement and not any past or future releases or versions; and

3.4.2 if you want to change the selected Operating Environments (including adding new Operating Environments or adding a different release or version of an Operating Environment), this shall be considered to be a change to the Specification and therefore subject to the provisions of clause 4.

Internet domain and website

3.5 The Digital Materials will be prepared for one internet domain, which shall be deemed to be part of the Specification. If you wish to directly or indirectly use the Digital Materials on an internet domain other than that for which it was designed under this agreement, such use shall be considered to be a change of the Specification and therefore subject to clause 4. You shall not in any case directly or indirectly use the Digital Material without our consent in writing on an internet domain other than that for which it was designed under this agreement.

Web hosting

3.6 We may from time to time agree to host your website (**Hosting Services**), subject to payment by you in advance of the Fees agreed by us from time to time in respect thereof. The following terms shall apply in respect of Hosting Services:

3.6.1 The Hosting Services shall be supplied in respect of each successive 12 month period (**the Hosting Period**) from the date on which the Hosting Services commenced.

3.6.2 In the event that we agree to provide Hosting Services, you shall pay the Fees in connection therewith in respect [annually in advance on or before the start of each Hosting Period].

3.6.3 At the end of each Hosting Period the Hosting Services shall automatically renew for a successive Hosting Period unless you terminate such Hosting Services in accordance with clause 3.6.4.

3.6.4 You may at any time give not less than 30 days' written notice to terminate the Hosting Services, provided that such notice expires at the end of the Hosting Period concerned.

- 3.6.5 If you do not give written notice of termination in accordance with clause 3.6.4, the Hosting Services shall automatically renew for a successive Hosting Period and the Fees in connection therewith shall be payable on or before the commencement of such Hosting Period.
- 3.6.6 We warrant that we shall use reasonable endeavours to provide the Hosting Services, however we do not warrant (and any such warranty, representation or other terms, whether express or implied is hereby excluded) that such Hosting services will be uninterrupted and/or error free.
- 3.6.7 We warrant that we shall take reasonable steps to prevent viruses and hacking, however we do not warrant (and any such warranty, representation or other terms, whether express or implied is hereby excluded) that any website hosted by us will be free of any viruses and/or hacking.
- 3.7 To the extent that we are asked to recommend or suggest a web hosting service provided by a third party (**a Third Party Host**), we may provide you with suggestions of possible Third Party Hosts. Our suggestions of Third Party Hosts, if any, are made in good faith, however you must carry out your own investigations in respect of any services provided by a Third Party Host and we assume no responsibility and/or liability in relation to the same. Accordingly, we hereby exclude any and all liability (whether direct and/or indirect and including negligence) in connection with your decision to engage any Third Party Host and/or the act and/or omissions of the Third Party Host.

Search engine optimisation

- 3.8 We may from time to time agree to provide you with search engine optimisation services (**SEO Services**), subject to payment by you in advance of the Fees agreed by us from time to time in respect thereof. The following terms shall apply in respect of SEO Services:
- 3.8.1 We shall use our reasonable endeavours to improve your website's ranking using standard search engine optimisation techniques, however no representation or warranty is given as to the effectiveness of such SEO Services (and any such warranty, representation or other terms, whether express or implied is hereby excluded to the fullest extent permitted by law).

Failure to provide Services

- 3.9 Subject to clause 10, if we fail to provide the Services our liability will be limited to our costs and expenses incurred by you in obtaining replacement services of similar description and quality in the cheapest market available less the price of the Services that you would have paid us had we provided you the Services.

4. CHANGES TO A SPECIFICATION

- 4.1 If you wish to change a Specification (including the time scales, the Operating Environments and/or the relevant internet domain), you must inform us in writing for the changes requested. No requested change and/or variation of the Specification shall be effective unless agreed by us in writing.
- 4.2 We will review the changes that you request. As a condition of agreeing to your requested changes we might ask you to sign a revised Statement of Work and/or require you to pay an additional Fee before agreeing to the changes.
- 4.3 If we have already started work on providing or preparing to provide Services pursuant to this agreement when you request a change, you agree to pay for the work that we have performed at our prevailing rate and to pay any and all costs that we have incurred. We reserve the right not to commence work on any Services in the event that we agree a change to the Specification until such time as this clause 4.3 has been complied with.
- 4.4 We shall, in any event, be entitled to charge you at our standard hourly rates from time to time in the event that we agree a change to the Specification (notwithstanding any discounted rate card agreed with you in respect of the Statement of Work) in respect of work already performed at the date of such change and in respect of work to be performed after such date.

- 4.5 In any event, we may (by way of notice to you) at any time make changes to the Specification which we believe (a) to be necessary to comply with applicable law or regulations, and/or (b) do not materially affect the nature or quality of the Specification

5. **WARRANTY**

Physical Materials

- 5.1 Subject to clause 5.10, we warrant (**the Warranty**) that on delivery, and for a period of 6 months from the date of invoice (**the Warranty Period**), the Physical Materials shall:

- 5.1.1 conform in all material respects with the Specification;
- 5.1.2 be free from material defects in design, material and workmanship; and
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

- 5.2 Subject to clause 5.10, if:

- 5.2.1 you give notice in writing to us during the Warranty Period and within a reasonable time of discovery that some or all of the Physical Materials do not comply with the Warranty; and

- 5.2.2 we are given a reasonable opportunity of examining such Physical Materials; and

- 5.2.3 we ask you to do so, you return such Physical Materials to our place of business at your cost,

we shall, **at our option**, repair or replace the Physical Materials that do not comply with the Warranty (at our cost including cost of return delivery to you), or (if the Physical Materials cannot be repaired or replaced) refund the price of the defective Physical Materials in full. Any defective Physical Materials (and parts) which are so repaired or replaced and/or in respect of which the price is refunded become our property.

- 5.3 If you give a notice under clause 5.2.1 and subsequently no defect is found to exist, we reserve the right to charge you a reasonable amount in respect of our wasted costs, including parts, labour and deliveries.

- 5.4 Subject to clause 10, we shall have no liability to you in respect of the Physical Materials' failure to comply with the Warranty, except as provided in this clause 5.

- 5.5 The Warranty shall apply to any repaired or replacement Physical Materials supplied by us for the longer of (a) the remainder of the Warranty Period and (b) 30 days from the date of supply of repaired or replacement Physical Materials.

- 5.6 The sale of the Physical Materials is not a sale by sample. The nature of printing means that any proofs that we provide you with will have a reasonable margin of variation compared to the Materials, for instance in relation to the saturation or density of printing, and therefore we cannot warrant that any proofs we send you will be identical to the Materials.

Digital Materials

- 5.7 Subject to clause 5.10, we hereby warrant (**the Digital Warranty**) that for a period of 1 month from the date of the relevant invoice (**the Digital Warranty Period**) the Digital Materials shall comply and perform materially in accordance with the Specification when viewed or otherwise accessed in the Operating Environments, save for any defect, fault or failure to perform arising directly or indirectly from:

- 5.7.1 a Force Majeure Event; or

- 5.7.2 misuse and/or abuse of the Digital Materials and/or the use thereof for purposes other than the Purpose; or

- 5.7.3 any defect or failure to the extent caused by modification, variation, development, adoption or amendment of the Digital Materials not performed by us.

- 5.8 Subject to clause 5.10, if you give us notice in writing during the Digital Warranty Period and within a reasonable time of discovery that some or all of the Digital Materials do not comply

with the Digital Warranty we shall, **at our option**, repair or replace the Digital Materials that do not comply with the Digital Warranty.

- 5.9 Subject to clause 10, we shall have no liability to you in respect of the Digital Materials' failure to comply with the Digital Warranty except as set out in this clause 5.

Limitation of warranties

- 5.10 We shall not be liable for Physical Materials' failure to comply with the Warranty and/or the Digital Materials' failure to comply with the Digital Warranty if:

5.10.1 you make any further use of such Materials after giving notice in accordance with clauses 5.2.1 and/or 5.8; or

5.10.2 the defect arises because (i) you failed to follow our oral or written instructions as to the storage, commissioning, use and/or maintenance of the Materials concerned or (if there are none) good trade practice and/or (ii) (in the case of Physical Materials) the Materials have been subject to excessive physical or environmental stress; or

5.10.3 the defect arises as a result of us following any drawing, design, instruction or specification supplied by you; or

5.10.4 you alter or repair such Materials without our written consent and/or other than in accordance with our written or oral instructions; or

5.10.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, misuse, accident, or abnormal storage or working conditions.

- 5.11 Except as expressly set out in this agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

6. TITLE AND RISK

- 6.1 The risk in the Physical Materials shall pass to you on completion of delivery.

- 6.2 Title (legal and beneficial) to the Physical Materials shall not pass to you until we have received payment in full (in cash or cleared funds) for:

6.2.1 the Physical Materials; and

6.2.2 all other sums which are payable to us for sales of the Physical Materials or any other products and/or services to you, including the Services and Digital Materials (whether or not such sums are payable before or after the invoice date of the Materials concerned).

- 6.3 Until title to the Physical Materials has passed to you, you shall:

6.3.1 hold the Physical Materials on a fiduciary basis as our bailee;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Physical Materials;

6.3.3 maintain the Physical Materials in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

6.3.4 notify us immediately if you become subject to any of the events listed in clause 9.9; and

6.3.5 give us such information relating to the Physical Materials on demand as we may require from time to time.

- 6.4 If before title to the Physical Materials passes to you, you become subject to any of the events listed in clause 9.9, or we reasonably believe that any such event is about to happen and notify you accordingly, and/or if you have failed to pay the price for any Materials delivered on or before the due date for payment then, provided that the Physical Materials have not been resold and delivered to a third party purchaser and without limiting any other right or remedy we may have, we may at any time require you to deliver up the Physical Materials and, if you fail to do so promptly, enter any of your premises or of any third party where the Physical

Materials are stored in order to remove them (and you grant us an irrevocable licence to enter your premises for such purpose).

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Ownership of any and all Intellectual Property Rights expressed in or on the Materials of whatsoever nature shall be and shall remain our property, subject to clauses 7.2 to 7.6 (inclusive).
- 7.2 In the event that we have agreed to assign any Intellectual Property Rights to you in the Statement of Work then, subject to clauses 7.4 to 7.6 (inclusive), we will assign such Intellectual Property Rights as are reproduced in the Materials by way of our standard form of assignment from time to time.
- 7.3 In the event that we have agreed to grant you a licence in the Statement of Work, then subject to clauses 7.4 to 7.6 (inclusive), we hereby grant you a non-exclusive, perpetual, royalty-free licence to use the Materials for the Purpose. We shall be entitled to use such Intellectual Property Rights as are reproduced in the Materials for any purpose whatsoever and/or to grant similar licences to third parties.
- 7.4 We shall not assign or licence any Intellectual Property Rights to you pursuant to clauses 7.2 or 7.3 until such a time as we have received payment in full (in cash or cleared funds) for:
- 7.4.1 the Materials; and
- 7.4.2 all other sums payable to us (whether or not such sums are payable before or after the invoice date of the materials), including the Fees,
- and any such assignment or licence shall be deemed to be void until such payment has been received.
- 7.5 Intellectual Property Rights in any drafts, specimens, samples and prototypes of anything that we produce will at all times remain ours and shall not be assigned, licensed or assignable or licensable under this agreement.
- 7.6 Notwithstanding clauses 7.2 and 7.3, the Intellectual Property Rights belonging to third parties in works incorporated in the Materials pursuant to clause 3.3 shall not be assigned or licensed to you by us pursuant to this clause 7 and/or otherwise.

8. PRICE AND PAYMENT

- 8.1 Subject to clause 8.2, our fees (**the Fees**) shall be as set out in the Statement of Work and in this agreement and as otherwise agreed by you and us from time to time in writing.
- 8.2 The Fees and all other amounts payable to us are stated exclusive of value added tax, which shall be payable by you in addition to such Fees and/or amounts at the prevailing rate.
- 8.3 Unless we specify dates on which payments are to be made in the Statement of, you agree to pay 50% of the Fees set out in the Statement of Work in cleared funds on or before the date of this agreement. You shall pay the remainder of the Fees within 30 days of completion of a Statement of Work (as determined by us acting in our absolute discretion).
- 8.4 Time of payment is of the essence.
- 8.5 If you fail to make any payment due to us under this agreement by the due date for payment, then (without prejudice to any of our other rights):
- 8.5.1 you shall pay interest on the overdue amount at the rate of 5% per annum above Lloyd's Bank base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You shall pay the interest at the same time as payment of the overdue amount;
- 8.5.2 we can suspend all further provision of Services to you under this agreement and/or terminate this agreement and/or any other agreements we have with you;
- 8.5.3 we can refuse to deliver any further Materials to you;

- 8.5.4 we can require immediate payment in full of all other amounts owed by you to us (whether or not such amounts have otherwise fallen due for payment);
- 8.5.5 we can require payment in advance in respect of any other agreements or services (whether or not such amounts have otherwise fallen due for payment).
- 8.6 You shall pay all amounts due under this agreement in full without any deduction or withholding except as required by law and you shall not be entitled to assert any deduction, discount, abatement, credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may at any time, without limiting any other rights or remedies we may have, set off any amount owing to us by you against any amount payable by us to you.
- 8.7 All amounts are payable in pounds sterling. However, we may in our absolute discretion (if requested by you) provide a quote in a different currency and/or allow payment in a different currency. In that event, the rate of exchange will be that selected by us in our reasonable discretion and (regardless of the rate of exchange applied to any quote or appearing on any invoice) in relation to payment, the rate of exchange will be that so specified by us on payment.
9. **CANCELLATION AND TERMINATION**
- 9.1 In the event that you wish us to stop working in respect of the Statement of Work you must send us a written cancellation request (**a Cancellation Request**).
- 9.2 We shall be entitled to cease providing the Services from the date of the Cancellation Request (**the Cancellation Date**).
- 9.3 In the event of a Cancellation Request, you shall pay us:
- 9.3.1 in respect of the Services performed by us up to and including the Cancellation Date (based on our standard hourly rates from time to time, notwithstanding any agreed discount rates);
- 9.3.2 in respect of our staff and resources to the extent that such staff and resources would have been used to perform the Services (but for the Cancellation Request) for a period of 14 days after the Cancellation Date;
- 9.3.3 any and all disbursements, costs, expenses and/or outgoings of whatever nature (**Expenses**) incurred, accrued, paid and/or payable in respect of any goods and/or services booked and/or ordered for or on your behalf and/or otherwise in respect of the Services before the Cancellation Date, whether such Expenses relate to the period before or after the Cancellation Date and whether such Expenses fall due for payment before or after the Cancellation Date.
- 9.4 You shall pay us the amounts referred to in clause 8.3 within 14 days of our determination thereof (and such determination shall be, in absence of manifest error, final and binding on the parties).
- 9.5 We may terminate this agreement by giving you not less than 30 days' written notice.
- 9.6 Subject to you paying the amounts referred to in clause 9.3, you may terminate this agreement by giving us not less than 30 days' notice, provided that such notice given on or after our determination under clause 9.4.
- 9.7 Without prejudice to clause 9.3, on termination of this agreement for any reason (the date of such termination being **the Termination Date**):
- 9.7.1 in respect of the Services performed by us up to and including the Termination Date (based on our standard hourly rates from time to time, notwithstanding any agreed discount rates);
- 9.7.2 any and all Expenses incurred, accrued, paid and/or payable in respect of any goods and/or services booked and/or ordered for or on your behalf and/or otherwise in respect of the Services before the notice of termination, whether such Expenses relate to the period before or after the Termination Date and whether such Expenses fall due for payment before or after the Termination Date.

9.8 If you become subject to any of the events listed in clause 9.9, or we reasonably believe that you are about to become subject to any of them and we notify you accordingly, then, without limiting any other right or remedy available to us, we may terminate this agreement and/or exercise any of the rights referred to in clauses 9.3.1 to 9.3.3 (inclusive) and all outstanding Fees (including any amounts referred to in clauses 9.3 and/or 9.7) shall become immediately due.

9.9 For the purposes of clause 9.8, the relevant events are:

9.9.1 you suspend, or threaten to suspend, payment of your debts or you are unable to or admit inability to pay your debts as they fall due within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) have any partner to whom any of the foregoing apply; a liquidator is appointed in respect of you; or

9.9.2 you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors or any class of creditors; or

9.9.3 you are the subject of a bankruptcy petition or order; or

9.9.4 a creditor or encumbrancer of yours 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 your assets and such attachment or process is not discharged within 7 days; or

9.9.5 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 you; or

9.9.6 a person becomes entitled to appoint an administrative receiver or a receiver or an administrative receiver or a receiver is appointed over any of your assets; or

9.9.7 any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in clause 9.9.1 to clause 9.1.6 (inclusive); or

9.9.8 you suspend, threaten to suspend, cease or threaten to cease to carry on all or substantially the whole of your business; or

9.9.9 your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under this agreement has been placed in jeopardy;

9.9.10 you die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or become a patient under any mental health legislation.

10. **LIMITATION OF LIABILITY**

10.1 Nothing in this agreement shall limit or exclude our liability for:

10.1.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);

10.1.2 fraud or fraudulent misrepresentation; or

10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

10.1.4 defective products under the Consumer Protection Act 1987; or

10.1.5 any matter to the extent it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to clause 10.1:

- 10.2.1 our liability for damage to your property (and that of any person to whom the Services are directly or indirectly supplied by you) shall be limited to (i) £500 in respect of any one event or series of connected events and (ii) £1,000 in respect of the total of all such claims;
- 10.2.2 our total liability to you in respect of all losses arising under or in connection with this agreement (save those referred to in clauses 10.2.1, 10.3 and 10.4), whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall be limited to the higher of 0.2 times the Fees under this agreement (exclusive of VAT) and £1,000.
- 10.3 Subject to clause 10.1, we shall not have any liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for indirect loss (other than any referred to in clause 10.2.1) arising under or in connection with this agreement.
- 10.4 If a court of competent jurisdiction determines that the provisions of clause 10.3 are not valid and enforceable this clause 10.4 shall apply, but in the absence of such a determination this clause 10.4 shall not be of any effect. Our total liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for indirect loss (other than any referred to in clause 10.2.1) arising under or in connection with this agreement shall be limited to the higher of 0.2 times the Fees (exclusive of VAT) and £1,000.
- 10.5 The limitations and exclusions of liability referred to in clauses 10.2 to 10.4 (inclusive) shall apply to the direct and indirect loss referred to in those clauses regardless of the nature of the loss and including the following:
- 10.5.1 special or other damage even though the Supplier was aware of the circumstances in which such special or other damage could arise;
- 10.5.2 loss of profits;
- 10.5.3 loss of anticipated savings;
- 10.5.4 loss of business and/or business opportunity;
- 10.5.5 loss of goodwill; and
- 10.5.6 loss or corruption of data.

11. **FORCE MAJEURE**

Neither us nor you shall be liable for any failure or delay in performing our respective obligations under this agreement (save in respect of the payment of any sum due) to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was not reasonably avoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources, information technology system, communication or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, shortages of supplies, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12. GENERAL

12.1 Assignment and subcontracting

12.1.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights and/or obligations under this agreement.

12.1.2 You may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights and/or obligations under this agreement without our prior express written consent.

12.2 Notices

12.2.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing, addressed to that party at its registered office or its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause or to its last known place of business, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.

12.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, at 9:00am on the Business Day after transmission.

12.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance

12.3.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions (or other part of any affected provision) of this agreement shall not be affected.

12.3.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.4 Entire Agreement

12.4.1 The Terms and each Statement of Work constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matters.

12.4.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Terms and/or the Statement of Work concerned. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Terms and/or any Statement of Work.

12.5 **Waiver.** A waiver of any right or remedy under this agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 12.6 **Publicity.** Subject to the Statement of Work, we shall be entitled to use, publish, reproduce and/or otherwise disclose the Materials, your name and/or the relevant project on our website and/or in our publicity materials from time to time for the purposes of publicising our involvement in preparing such Materials, in the performance of the Services and/or in otherwise in relation to the relevant project.
- 12.7 **Third party rights.** A person who is not a party to this agreement shall not have any rights under or in connection with it.
- 12.8 **Variation.** Subject to any rights expressly reserved to us to make changes, any variation to this agreement, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by you and us.
- 12.9 **Governing law and jurisdiction.** This agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree, for the sole benefit of us that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of us to take proceedings against you in any other court of competent jurisdiction, nor shall the taking of proceedings by us in any one or more jurisdictions preclude the taking of proceedings by us in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.