

## TERMS AND CONDITIONS OF BUSINESS OF HEP CREATIVE

### 1 DEFINITIONS

The following expressions shall have the following meanings:

- 1.1 "Company" "we" "us" "our" and similar expressions means Hep Creative of 43(B) Southampton Road, Ringwood, Hampshire, BH24 1HE;
- 1.2 "Client" "you" "your" and similar expressions means any person who purchases Services from the Company;
- 1.3 "Proposal" means a quotation or other similar document describing the Services;
- 1.4 "Services" means the design services as described in the Proposal;
- 1.5 "Specifications" means the specification set out in the Proposal;
- 1.6 "Terms and Conditions" means the terms and conditions of supply of Services as set out in this document and any subsequent terms and conditions agreed in writing by the Company;
- 1.7 "Agreement" means the contract between the Company and the Client for the provision of the Services incorporating these Terms and Conditions;
- 1.8 "Intellectual Property Rights" means any patent, trademark, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database rights, know-how, confidential information or process, any application for any of the above, and any other Intellectual Property Right recognised in any part of the world whether or not presently existing or applied for;
- 1.9 "Mediator" is the party nominated to resolve a dispute between the Company and the Client.
- 1.10 "The Client's Materials" means all materials delivered to the Company by the Client;
- 1.11 "The Commissioned Work" refers to the physical design work, website, copying, printing or other work ordered by the Client from the Company;
- 1.12 "Materialization Items" is defined in Condition 9.5;
- 1.13 "The Price" means the sums to be paid by the Client to the Company as specified in the Proposal.
- 1.14 "Commencement Date" means the date of commencement of the Services as set out on the Proposal;
- 1.15 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.16 The headings of the paragraphs of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

### 2 GENERAL AGREEMENT

- 2.1 These Terms and Conditions shall apply to the Agreement for the supply of Services by the Company to the Client and shall supersede any other documentation or communication between parties.
- 2.2 Any variation to these Terms and Conditions must be agreed in writing by the Company.

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- 2.3 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Company may be entitled in relation to the Services, by virtue of any statute, law or regulation.

### 3 PROPOSAL

- 3.1 The Proposal for Services is supplied in addition to these Terms and Conditions.
- 3.2 The Proposal for Services shall remain valid for a period of 20 days.
- 3.3 The Proposal must be accepted by the Client in its entirety.
- 3.4 The Agreement between the Company and the Client, incorporating these Terms and Conditions, shall only come into force when the Company confirms acceptance in writing to the Client.
- 3.5 Clerical errors or omissions in the Proposal shall be rectified by the company as soon as they are discovered, and any such errors or omissions will not be binding upon the Company, nor permit the Client to vary the contract or any of its terms.

### 4 SERVICES AND DELIVERY

- 4.1 The Services are as described in the Proposal.
- 4.2 Any variation to the Services must be agreed by the Company in writing.
- 4.3 The Services shall commence on the date of or as specified in the Proposal and continue until terminated by either party giving not less than one month's notice in writing or unless terminated according to the terms of this Agreement.
- 4.4 The Services shall be carried out at the place of work of the Company or the Client or any other location that the Company deems appropriate.
- 4.5 The Company shall provide technical support, if required, by phone or by e-mail during the hours of 9.00am and 5.00pm Monday to Friday. If an issue occurs outside these hours the client may e-mail the Company or leave a telephone message on the office number 01425 472847. The Company will endeavour to respond to the client by the start of the next business day.
- 4.6 The Company shall nominate a Project Manager who shall be available to respond to the Client's enquiries and who shall manage the Project upon the terms of this clause. The Project Manager shall act promptly and fairly at all times during the term of this Agreement and in particular shall:
- 4.6.1 contribute as many hours or days of work as are required from time to time for the needs of the Project in accordance with the Timetable; and
- 4.6.2 keep detailed records of all work carried out in relation to the Project by him or any other employee or agent of the Company, such records or copies thereof to be made available to the Client on request and to remain confidential to the Company and the Client.
- 4.7 The Client shall nominate a Project Co-ordinator who shall be available to co-ordinate with the Project Manager and who shall provide all information and documentation required by the Company for the proper performance of the Project.
- 4.8 The parties shall ensure that the Project Manager and the Project Co-ordinator review the progress of the Project on a minimum of a weekly basis and agree a report of it.
- 4.9 If the Project Manager or the Project Co-ordinator is prevented by illness or injury from performing his duties under this Agreement, the Company or the Client (as the case may be) shall report the fact and its expected duration to the other party. If the Project Manager's absence through illness or injury continues for more than 3

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consecutive working days the Company shall make available an alternative suitably qualified and experienced Project Manager acceptable to the Client. If the Project Co-ordinator's absence through illness or injury continues for more than 3 consecutive working days, the Client shall make available an alternative suitably qualified and experienced Project Co-ordinator.

- 4.10 Dates given for the delivery of Services are estimates only and not guaranteed. Time for delivery shall not be of the essence of the Agreement and the Company shall not be held liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery.
- 4.11 The Client may request to change or cancel any plans, work in progress or services for which have engaged a third party supplier, these may include but are not exhaustive - print work, exhibition stand build, photography, and we shall take all reasonable steps to comply with any such request provided that we are able to do so within our contractual obligations to the supplier concerned. The Client will be liable for any charges incurred with such requests.
- 4.12 The Company may reject any physical or digital files or other materials supplied or specified by the Client which appear to them to be unsuitable for outputting on equipment normally adequate for such purposes without adjustment or other corrective action the Company may make a charge for any additional cost incurred thereby.
- 4.13 Proofs of all work maybe submitted for the Client's approval and the Company shall incur no liability for any errors not corrected by the Client in proofs so submitted. Client's alterations and additional proofs necessitated thereby shall be charged extra. When style, type or layout is left to the Company's judgement, changes made by the Client shall be charged extra.
- 4.14 Upon successful completion the Client shall be required to sign the Company's formal acceptance form confirming that:
  - 4.14.1 the Company has successfully completed the Project under the terms of this Agreement; and
  - 4.14.2 the Company shall deliver to the Client all relevant information in relation to the Commissioned Work, once the Client has paid the final invoice.
- 4.15 Notwithstanding any provisional acceptance or use of the Commissioned Work by the Client final acceptance of it shall not occur until successful completion and shall be without prejudice to any of the Client's rights set out in this Agreement.

## 5 PRICE AND PAYMENT

- 5.1 The Price for Services is as specified in the Proposal and is exclusive off VAT, unless stated, and any other additional charges as outlined in the Proposal.
- 5.2 The terms for payment are as specified in the Proposal.
- 5.3 All direct costs and expenses incurred by the Company in connection with the provision of the Services will be re-charged at cost or according to standard charges as described in the Proposal and are payable by the Client on production of the appropriate receipts.
- 5.4 The Client must settle all payments for Services within 20 days from the invoice date, excluding Vehicle Livery services which must be settled upon collection of vehicle(s).
- 5.5 The Client will pay interest on all late payments at a rate of 3% per annum above the base lending rate of Lloyds TSB.
- 5.6 The Company is also entitled to recover all reasonable expenses incurred in obtaining payment from the Client where any payment due to the Company is late.

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- 5.7 The Client is not entitled to withhold any monies due to the Company.
- 5.8 The Company is entitled to vary the price to take account of:
- 5.8.1 any additional Services requested by the Client which were not included in the original Proposal;
  - 5.8.2 any additional work required to complete the Services which was not anticipated at the time of the Proposal;
  - 5.8.3 any reasonable increase in hourly rate, if applicable;
- and any variation must be intimated to the Client in writing by the Company.
- 5.9 The Company reserves the right to alter the Company's price list at any time but such alteration shall only take effect one month after notice has been given to the Client.
- 5.10 The Company shall be responsible for the payment of National Insurance contributions as a self-employed person and for the payment of any Income Tax, VAT or other liabilities arising out of remuneration for providing the Services.
- 5.11 Where a third party supplier has requested payment in advance of any expense, you agree to pay our invoice for such expenses immediately on presentation.
- 5.12 The Company has the right, at their discretion, to suspend performance of the Services until you have paid all outstanding amounts together with all accrued interest due; and if your late payment of any sum due causes us to be charged interest or any surcharge by a third party supplier, you shall immediately reimburse us the amount of such interest or surcharge.
- 5.13 The Company is entitled to request and receive payment in advance for postage, administration and handling necessary to perform a mailing on behalf of the Client.

## 6 CLIENT OBLIGATIONS

- 6.1 The Client agrees to cooperate with the Company and shall provide any support, information and facilities to the Company as may be required:
- 6.1.1 all drafts, concepts, text, graphics, logos, photographs, images, moving images, sound, illustrations and other materials for use in accordance with these Conditions in the agreed format and shall use reasonable efforts to ensure that it is correct and update it when required to do so pursuant to this Agreement.
  - 6.1.2 where the Client has engaged more than one supplier in the provision of others design services relating to the Proposal including, but not limited to, corporate identity, logo design the Client shall deliver the brand identity or design to the Company by the date set out in the Timetable.
- 6.2 The Client is responsible for obtaining all necessary permits or approvals to enable to Company to provide the Services.
- 6.3 For Photography services the Client shall ensure that any areas to be photographed are in a suitable and presentable condition.
- 6.4 The Client shall make any necessary corrections and subsequently approve all proofs and drafts supplied by the Company.
- 6.5 The Client warrants that the display of and distribution of virtual images, of which they are responsible, via the internet or email, complies with all relevant legislation (including the Data Protection Act 1998 and the Property Misdescriptions Act 1991).

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- 6.6 The Client agrees to refrain from directly or indirectly recruiting any person employed or engaged by the Company for the purpose of providing the Services for a period of six months following completion of the Services.

### 7 COMPANY OBLIGATIONS

- 7.1 The Company shall supply the Services as specified in the Proposal and agrees:
- 7.1.1 to create and deliver the Commissioned Work including, but not limited to, copy, graphics, logos, photographs, images, moving images, illustrations and other materials to be featured, displayed or used in or in relation to the Commissioned Work as set out in the Specification; and
  - 7.1.2 to advise the Client in relation to the project and the production of the Commissioned Work.
- 7.2 The Company shall perform the Services with reasonable skill and care and to a reasonable standard and in accordance with recognised codes of practice.
- 7.3 The Company shall take all reasonable steps to avoid mistakes when providing the Services but shall incur no liability should errors be found after the Client has approved the proofs.
- 7.4 The Company may, at its sole and absolute discretion, delegate any obligations to other employees or sub-contract any or all of its obligations but shall remain liable to the Client therefore. The Company undertakes to only notify the Client of any significant changes to personnel.
- 7.5 For printed material every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon margins of 10 per cent for quantities less than 50,000 and 5 per cent for quantities exceeding 50,000. The Client will accept over runs or under runs that do not exceed these margins.

### 8 CONFIDENTIALITY

- 8.1 The Company shall keep secret and confidential all information relating to the business or affairs of the Client, the Clients subsidiaries and the Clients customers.
- 8.2 The Company shall ensure that any other parties to whom work has been delegated will sign an appropriate secrecy undertaking.

### 9 INTELLECTUAL PROPERTY RIGHTS & DESIGN WORK

- 9.1 The Company shall take all reasonable steps to ensure that they, or others to whom work has been delegated, refrain from causing damage to the Intellectual Property Rights belonging to the Client.
- 9.2 The Client shall not distribute any Intellectual Property Rights belonging to the Company to any third party without the written consent of the Company.
- 9.3 Any Intellectual Property Rights created as a result of the Services shall belong to the Company unless provisions, such as the granting of a royalty-free, world-wide, non-exclusive licence, have been made to the contrary in the Proposal and the Company then agrees to:
- 9.3.1 assign all rights, title and interest (including all intellectual property rights) in the Commissioned Work, and the parts of the content designed by the Company to the Client with full title guarantee.
- 9.4 Upon final payment the Company shall grant to the Client a royalty-free, world-wide, non-exclusive license to use the Commissioned Work designed by the Company

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solely for the purpose for which it was commissioned. Rights to the individual graphics, source code are not transferred to the Client and remain the property of the Company.

- 9.5 The Client warrants that any material belonging to the Client and its use by the Company for the purpose of providing the Services will not infringe the copyright or other rights of any third party, and the Client shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 9.6 During the course of the design work the Company may originate physical materials these may include but are not exhaustive - artwork, digital artwork, computer files, photographic negatives or positives, CD's DVD, and printing plates, together with all other intermediate material including proofs and development designs. This is referred to in these Conditions as "Materialization Items". Subject as provided in this Condition all Materialization Items belong to the Company absolutely.
- 9.7 On due payment by the Client for Commissioned Work designed by the Company, the Company will: (i) return to the Client the Client's Materials subject to payment by the Client of all expenses incurred; (ii) deliver and transfer to the Client copies of the Materialization Items if applicable;
- 9.8 Notwithstanding any of the above the Company and any sub-contractor shall be entitled during and after the term of this Agreement to use any or all of the Design Works for the purpose of promoting the Company's business.

### 10 PROPERTY AND RISK

- 10.1 Client's Materials and all property supplied to the Company by or on behalf of the Client shall, while it is in the possession of the Company or in transit to or from the Client, be deemed to be at Client's risk unless otherwise agreed and the Client should insure accordingly.
- 10.2 Adequate insurance should be held by both parties to protect any property or materials that are within their care.
- 10.3 The Company must store any property or materials belonging to the Client separately from any other property or materials belonging to the Company or a third party.
- 10.4 The risk of loss or damage of any kind to the Commissioned Work shall pass to the Client on delivery and the Client should therefore be insured accordingly.

### 11 TERMINATION & TERM

- 11.1 The Agreement shall continue until the Services have been provided in terms of the Proposal or any subsequent date as mutually agreed in writing by both parties or until terminated by either party in accordance with these Terms and Conditions.
- 11.2 The Client may terminate the Agreement if the Company fails to comply with any aspect of these Terms and Conditions and this failure continues for a period of 30 days after notification of non-compliance is given.
- 11.3 The Company may terminate the Agreement if the Client has failed to make over any payment due within 30 days of the sum being requested.
- 11.4 Either party may terminate the Agreement by notice in writing to the other if:
- 11.4.1 the other party commits a material breach of these Terms and Conditions and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or
- 11.4.2 the other party commits a material breach of these Terms and Conditions which cannot be remedied under any circumstances; or

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- 11.4.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or
- 11.4.4 the other party ceases to carry on its business or substantially the whole of its business; or
- 11.4.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- 11.5 In the event of termination the Client must make over to the Company any payment for work done and expenses incurred up to the date of termination and cannot be refunded. The Company agrees to:
- 11.5.1 to demonstrate such work completed to the Client by presentation of materials written or created expressly for that project.
- 11.6 Any rights to terminate the Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of the Agreement as at the date of termination.
- 11.7 If the Client ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or being a company is deemed to be unable to pay its debts or has a winding-up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him, the Company without prejudice to other remedies shall:
- (a) have the right not to proceed further with the contract or any other work for the Client and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Client, such charge to be an immediate debt due to him, and
- (b) in respect of all unpaid debts due from the Client have a general lien on all goods and property in his possession (whether worked on or not) and shall be entitled on the expiration of 14 days notice to dispose of such goods or property in such manner and at such price as he thinks fit and to apply the proceeds towards such debts.

## 12 MEDIATION

- 12.1 Any dispute arising under this Agreement will be referred to and decided by the Mediator.
- 12.2 The Mediator will be appointed by application to a local mediator service provider.
- 12.3 A party wishing to refer a dispute to the Mediator shall advise the other party of this intention in writing at any time during the term of this Agreement. The dispute must then be referred to the Mediator within seven (7) days of this intention being intimated.
- 12.4 The Mediator shall act impartially and be free to take the initiative in ascertaining the facts and the law. The Mediator must reach a decision within twenty eight (28) days of referral or such longer period as the parties may agree.
- 12.5 During the period of mediation both parties must continue with their obligations as stated in this Agreement.
- 12.6 The decision of the Mediator is binding on both parties unless and until revised by legal proceedings or agreement by both parties.

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### 13 WARRANTY

- 13.1 Both parties warrant their authority to enter into this Agreement and have obtained all necessary approvals to do so.
- 13.2 The Company may refuse to print any of the Client's Materials which in its opinion contains any defamatory or obscene matter or may infringe any Intellectual Property Rights of any third party.
- 13.3 The Client warrants to the Company that it owns the Client's Materials and all Intellectual Property Rights in them and that the Client's Materials do not infringe any Intellectual Property Rights of any third party and would not if used in relation to the sale of any Commissioned Work or the provision of any services infringe any Intellectual Property Rights of any third party.

### 14 LIMITATION OF LIABILITY

- 14.1 The Company shall not be liable under any circumstances to the Client or any third party for any indirect or consequential loss of profit, consequential or other economic loss suffered by the Client howsoever caused, as a result of any negligence, breach of contract, misrepresentation or otherwise.
- 14.2 Nothing in these Terms and Conditions shall exclude or limit the liability of the Company for death or personal injury, however the Company shall not be liable for any direct loss or damage suffered by the Client howsoever caused, as a result of any negligence, breach of contract or otherwise in excess of the sum insured under the professional indemnity insurance policy held by the Company in the insurance year in which the Clients claim is first notified.

### 15 INDEMNITY

The Client shall indemnify the Company against all claims, costs and expenses which the Company may incur and which arise directly or indirectly from the Clients breach of any of its obligations under these Terms and Conditions.

### 16 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

### 17 ASSIGNMENT

The Client shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Company.

### 18 RELATIONSHIP OF PARTIES

Nothing in the Agreement shall be construed as establishing or implying a partnership or joint venture between the parties or suggest that either of the parties are agent for the other.

### 19 THIRD PARTY RIGHTS

Nothing in these Terms and Conditions intend to or confer any rights on a third party.

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### 20 SEVERANCE

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

### 21 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions.

### 22 NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Proposal or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

### 23 ENTIRE AGREEMENT

These Terms and Conditions supersede any previous agreements, arrangements, documents or other undertakings either written or oral.

### 24 GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

### 25 AMENDMENT

- 25.1 These terms may be changes, amended or altered in part, or in full, without warning by the Company. It is the responsibility of the client to read and understand these terms and conditions.

### 26 ALTERATIONS

- 26.1 The Client may at any time request alterations to the Specification by notice in writing to the Company.
- 26.2 On receipt of the request for alteration the Company shall, within 5 working days or such other period as may be agreed between the parties, advise the Client by notice in writing of the effect of the alteration, if any, on the Price, the Timetable and any other terms already agreed between the parties. Any increase in the Price shall be in accordance with the standard charges of the Company for labour. For the avoidance of doubt, the Client's requirement that the Company carry out amendments or modifications or corrective or remedial work pursuant to Clause 7 shall not constitute an alteration within the meaning of this Clause.
- 26.3 Where the Company gives written notice to the Client agreeing to perform an alteration on terms different to those already agreed between the parties, the Client shall, within 5 working days of receipt of such notice, advise the Company by notice in writing whether or not he wishes the alteration to proceed.

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- 26.4 Where the Company gives written notice to the Client agreeing to perform an alteration on terms different to those already agreed between the parties, and the Client confirms in writing that he wishes the alteration to proceed on those terms, this Agreement shall be deemed automatically to have been amended so as to include the alteration and thereafter the Company shall perform this Agreement upon the basis of such amended terms.

### **B: TERMS AND CONDITIONS FOR WEBSITE DESIGN**

#### **27. PAYMENT TERMS**

- 27.1 The Client shall pay the Company the Price according to the Terms of Payment as specified in condition 5 with the addition of condition 27.2:
- 27.2 Upon completion of the work specified in the Proposal, the Company shall raise a final invoice for the remainder which shall be due for payment 24 hours before the site goes live.

#### **28. INTELLECTUAL PROPERTY RIGHTS**

- 28.1 Except as specifically amended within the Proposal, the Company shall retain title to the copyright of all computer code written by employees of the Company, howsoever that code is subsequently applied to computer applications, and whether or not that code is embedded within software written for and sold to the Client.

#### **29. TESTING**

- 29.1 On completion of the Website the Company shall provide the Client with a temporary URL where the Website can be viewed and tested. If the Project Co-ordinator in his sole discretion considers that the Website has failed in any way to perform in accordance with the Specification and/or that amendments or modifications or corrective or remedial work are required, he shall promptly advise the Company in writing outlining the areas which require to be modified. On receipt of this notice the Company shall, subject to Clause 29.2, free of charge, investigate and make the changes to the Website (including corrections or enhancements to the software used) necessary to ensure that it will perform in accordance with the Specification. Following the necessary changes the Client shall test the Website again on the same terms as above and if no further changes are intimated by the Client, this shall be referred to as "successful completion". For the avoidance of doubt, the Company shall not undertake any changes free of charge where they require the Website to operate in a manner not provided for by the Specification.
- 29.2 Where the Project Co-ordinator considers that the Website has failed and on investigation pursuant to Clause 29.1 this proves to be a result of an error by the Client, the Company shall be entitled to charge for the costs of investigation and of making the changes that are necessary and agreed at the Company's then current price list.
- 29.3 The Company shall ensure that successful completion occurs on or before the date set out in the Timetable for completion to occur. If any delay in achieving successful completion is due to delay or error beyond the control of the Company, the relevant dates set out in the Timetable shall be deemed deferred as agreed.

### **C: TERMS AND CONDITIONS FOR WEB HOSTING, MAINTENANCE & SEARCH ENGINE OPTIMIZATION (SEO) CONTRACTS**

#### **30. SEO PAYMENT TERMS**

- 30.1 The Price for Services is as specified in the Proposal and is exclusive off VAT, unless stated, and any other additional charges as outlined in the Proposal.
- 30.2 The Client shall pay the Company the Price according to the Terms of Payment as specified in condition 5 with the addition of conditions 30.3 - 30.8:

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- 30.3 The Company shall raise an invoice for the first period of the service provision being an initial minimum period of three months and the invoice shall be due for payment upon receipt. No Services shall be provided until payment has been received by the Company.
- 30.4 The Client shall pay the 100% of the invoice value in advance of any SEO work being completed by the Company.
- 30.5 FULL SETTLEMENT without exception for all outstanding fees are to be paid within 7 working days of the Company issuing an invoice.
- 30.6 If payment is not received following 7 working days of the invoice being sent, Hep Creative will charge interest on the amount outstanding from the due date to the date of receipt by the Company (whether or not after judgement), at the annual rate of 4% above the then current base lending rate of Barclays Bank plc, accruing daily and compounded quarterly;
- 30.7 The Company will invoice the Client in advance on a monthly basis via email.
- 30.8 Accepted payment methods include cheque and BACs.

### **31. WEBSITE HOSTING & WEBSITE MAINTENANCE PAYMENT TERMS**

- 31.1 The Price for Services is as specified in the Proposal and is exclusive off VAT, unless stated, and any other additional charges as outlined in the Proposal.
- 31.2 The Client shall pay the Company the Price according to the Terms of Payment as specified in condition 5 with the addition of condition 31.3:
- 31.3 The Company will invoice the Client in advance:
  - 31.3.1 on a yearly basis for website hosting;
  - 31.3.2 on a monthly basis for website maintenance.

### **32. TERM & TERMINATION**

- 32.1 The Client shall pay the Company the Price according to the Term Termination as specified in condition 11 with the addition of condition 32.2:
- 32.2 The Services shall commence on the Commencement Date and shall remain in force from year to year thereafter, unless and until terminated by either party giving one months notice expiring at any time after the end of the minimum period or otherwise in accordance with any other clause of this Contract.

### **33. SEARCH ENGINE RESULTS**

- 33.1 The Company agrees to adhere to the obligations according to the Company Obligations as specified in condition 7 with the addition of conditions 33.2 - 33.6.
- 33.2 The Company cannot guarantee that any search engine will index or list any web pages or sites submitted by the Company. However, the Company will try to ensure that a site is optimised to increase the speed with which it appears on the search engines' databases.
- 33.3 The Company shall be under no obligation to provide Services to give a 100% guarantee for any specific result on any search engine, nor can the Company quantify the level of increased traffic or sales, as a result of the SEO campaign.

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- 33.4 The Company offer no guarantees of ongoing performance of the Client's website and cannot be held responsible for any drop in traffic or search engine ranking.
- 33.5 The Company aim to achieve, wherever possible, a page 1 or page 2 result on Google for a minimum of two mutually agreed key phrases. We would expect to achieve the desired position for your chosen search term within 3-6 months of the optimised pages going live. New sites can take up to 12 months before results become apparent.
- 33.6 Search engine ranking reports will be based on three major search engines; Google UK, Yahoo UK and MSN UK unless agreed by the Company.

### **34. WEB HOSTING SERVICES**

- 34.1 The Company shall use its reasonable endeavours to make the server and the Services available to the Client 100% of the time but because the Services are provided by means of computer and telecommunications systems, the Company makes no warranties or representations that the Service will be uninterrupted or error-free and the Company shall not, in any event, be liable for interruptions of Service or downtime of the server.
- 34.2 The website and use of the Services may be used for lawful purposes only and the Client may not submit, publish or display any content that breaches any law, statute or regulation. The Company retains the right to suspend this hosting service if advised that the content therein may contravene English law. If the Client fails to comply the Company shall be entitled to withdraw the Services and terminate the Client's account without notice.
- 34.3 The Company may suspend Services temporarily for maintenance work to be carried out and reasonable notice will be given if possible by email.

### **35. CLIENT OBLIGATIONS**

- 35.1 The Client agrees to adhere to the obligations according to the Client Obligations as specified in condition 6 with the addition of conditions 35.2 - 35.7.
- 35.2 The Client will provide the Company with reasonable direct and remote access to its website, and shall provide such other reasonable assistance as the Company may request, including, but not limited to, providing source code and other statistical, diagnostic information and other relevant information required to enable the Company to comply with its obligations under the Agreement.
- 35.3 The Client shall comply with directions and advice from the Company within a reasonable period.
- 35.4 The Client shall not interfere or disrupt the Service.
- 35.5 The Client shall not participate in the use of Unethical SEO, prior to and during the term of this Agreement.
- 35.6 The Client shall host the website for the specified domain either with the Company or on a reliable third party server which fully complies with the Company's specifications.
- 35.7 The Client shall be responsible for maintaining a current copy of the website, unless the Company are providing website maintenance services as part of the Agreement. Hep Creative will not be liable for any problems arising due to the Client's failure to maintain a current copy of the website.

## TERMS AND CONDITIONS OF BUSINESS OF HEP CREATIVE

### 36. IMPLEMENTATION OF SEO SERVICE

- 36.1 In consideration of the payment by the Client of the Fees in accordance with the Agreement the Company shall provide the Services during the continuance of this Agreement.
- 36.2 The Company shall be permitted to subcontract or outsource any of the Services or obligations under the Agreement.
- 36.3 The Company will use reasonable efforts to provide the Client with the Services in accordance with the estimated timeline set out in the Proposal.
- 36.4 Where the Service being provided requires, the Company will liaise with the relevant web agency, hosting company or other third party in order to provide the Services. The Company shall not be liable for any act or omission by the relevant web agency, hosting company or other third party, if such act or omission results in the Company breaching its obligations under the Agreement.
- 36.5 The Company will not make changes to or update a Client's website prior to written or verbal consent from the Client, stating that the Company have the right to make the agreed changes and the Client, as the website owner, agrees to and takes full responsibility for those changes being made.
- 36.6 If stated in the Proposal the Company shall provide the link building services as specified for the chosen Service.
- 36.7 The number of links stated in the Proposal is the number of links that the Company will provide on the link building report. The number is correct at the point at which the report is generated and quality controlled, whereupon it will be emailed to the Client.
- 36.8 The Company offer no guarantee for the length of time each link will remain live after the point at which it has been confirmed and reported on the Client link report. The Company will not be liable for any links being removed by a third party.
- 36.9 If stated in Proposal the Company shall provide the page optimization services as specified for the chosen Service.
- 36.10 If stated in Proposal the Company shall provide the social media optimization services as specified for the chosen Service.
- 36.11 The Company offer no guarantee for the length of time any article submitted under the social media optimization service will remain live after the point at which it has been confirmed and reported on the Client report.
- 36.12 If stated in Proposal the Company shall provide the reporting services as specified for the chosen Service.
- 36.13 If stated in Proposal the Company shall provide the customer support services as specified for the chosen Service.

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### 37. DATA PROTECTION ACT

- 37.1 If any Personal Data (as defined by the Data Protection Act 1998) is passed to Hep Creative under the Agreement then the parties agree that the Client is the Data Controller and that the Company is the Data Processor.
- 37.2 The Client warrants that it complies with the Data Protection Act 1998.
- 37.3 The Company shall:
- I. process the Personal Data only in accordance with instructions from Client;
  - II. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
  - III. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure; and
  - IV. take reasonable steps to ensure the reliability and confidentiality of any of the Company's personnel who have access to the Personal Data.