



Terms and Conditions for the Supply of Services

These Terms and Conditions (Terms) set out the terms under which we, New Brand Vision Limited, (registered in England and Wales with company number 4263636, with our registered office at 19 Cumberland Road, Stanmore, Middlesex HA7 1EL), provide marketing and related services to our clients. Our trading names include 'New Brand Vision Group', 'NBV Group', 'New Brand Vision', 'NBV' and 'Decibel'.

All marketing and related services provided by us shall, unless otherwise agreed by us in writing, be subject to these Terms. By requesting us to provide any services to you, you hereby agree to be bound by these Terms. Schedule 1 sets out additional provisions which apply to particular types of services.

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Terms:

Acceptance Tests: has the meaning given in Schedule 1, paragraph 1.3.

Back End Code: this is the more complex functionality than Front End Code which enables a website to perform processes and store information. It includes databases and programming using languages such as PHP and Java.

Bespoke Items: has the meaning given in clause 9.2.

Business Day: any day (other than a Saturday or Sunday) when banks are normally open for normal business in London.

Client Zone: a password protected area on our website where clients can provide feedback.

Contract: your purchase order for Services and our acceptance of it, or your acceptance of a quotation for Services by us under clause 2.2.

Deliverables: all Documents, products and materials developed by us in relation to a Project Plan in any form, including designs, graphics, computer programs (whether created on a bespoke basis or otherwise), content management systems, data, reports and specifications (including drafts) or any other deliverables specified in the Project Plan.

Design Concepts: has the meaning given in Schedule 1, paragraph 3.2.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Client Materials: all Documents, information and materials provided by you relating to the Services including, computer programs, data, hosting, servers, reports and specifications, as may be specified in the Project Plan.

Front End Code: the HTML code and CSS style sheets, which sit immediately behind the 'look and feel' of a website to make the user interface operational. It excludes any databases or programming using languages such as PHP or JavaScript.

Inappropriate Content: has the meaning given in Schedule 1, paragraph 1.15.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Non-Supplier Defect: has the meaning given in Schedule 1 paragraph 1.5.

Notified Purposes: has the meaning given in clause 12.3(b).

Our Equipment: any equipment, including tools, systems, cabling or facilities, provided by us or our subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between you and us under which title passes to you.

Our Manager: our manager for a Project appointed under clause 5.4.

Personal Data: shall have the meaning given in the Data Protection Act 1998.

Pre-existing Materials: all Documents, information and materials provided by us relating to the Services which existed prior to the commencement of the Contract including computer programs, software, content management systems, data, research, reports and specifications or as otherwise specified in the Project Plan.

Project Plan: the detailed plan describing a Project and setting out the estimated timetable and responsibilities for the provision of the Services, agreed in accordance with clause 4.

Project: a project as described in a Project Plan.

Services: the marketing and related services to be provided by us under the Contract as set out in a Project Plan, together with any other services which we provide or agree to provide to you.

Server: any computer server administered by or on behalf of us, as referred to in the Project Plan.

Third Party Products: any third party products or services, including (but not limited to) software (including open source binaries), printing, photography, direct mailing, fulfilment, pay-per-click advertising, consumer and market research, brand planning, communication planning, media planning and buying, field marketing distribution (e.g. hand-outs or door-to-door), event planning, organisation and delivery, trade mark checking, courier services, supplied as part of the Services, as may be referred to in the Project Plan.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

You: the person, firm or company who purchases Services from us.

Your Equipment: any equipment, systems, cabling or facilities provided by you and used directly or indirectly in the supply of the Services.

Your Manager: your manager for a Project, appointed in accordance with clause 6.1.

Website: any website, extranet or intranet to be designed and/or hosted by us, as specified in the Project Plan, as referred to in Schedule 1, paragraph 1.3.

Website Software: any software, bespoke or pre-existing, for a Website commissioned by you.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of the Contract and shall have effect as if set out in full in the body of these Terms.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes faxes and e-mail.

2. Application of Terms

- 2.1 These Terms shall:
 - (a) apply to and be incorporated into the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained, or referred to, in your purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 Your purchase order, or your acceptance of a quotation for Services by us, constitutes an offer by you to purchase the Services specified in it on these Terms. No offer placed by you shall be accepted by us other than:
 - (a) by our written acknowledgement; or
 - (b) (if earlier) by our starting to provide the Services,



when a contract for the supply and purchase of those Services on these Terms will be established. Your standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern these Terms of the Contract.

- 2.3 Quotations are given by us on the basis that no agreement or Contract shall come into existence except in accordance with clause 2.2. Any quotation is valid for a period of 30 days from its date, provided that we have not previously withdrawn it.

3. Commencement

- 3.1 The Services supplied under the Contract shall be provided by us after we have accepted your offer in accordance with clause 2.2 and we have formulated the Project Plan in accordance with the provisions of clause 4 below.

4. Project Plan

- 4.1 Project Plan(s) shall be agreed in the following manner:
- Unless otherwise agreed by us, you shall provide us with a request for a Project Plan, accompanied by a written brief setting out your requirements and specifications of the Services which you are requesting from us, including a description of what work is to be done, any dates by which it or each stage of the work is requested to be started and finished, Deliverables, Client Materials and such other information as we may request to allow us to prepare a draft Project Plan;
 - We shall, as soon as reasonably practicable, provide you with a draft Project Plan; and
 - We and you shall discuss and agree the draft Project Plan and when it has been agreed, you shall sign a copy of it and return it by fax/post to us within 30 days and it shall become subject to these Terms. Any subsequent Project Plans to which you agree, will be subject to the then current set of Terms, which are available on our website www.newbrandvision.com/terms, a further copy of which can be provided on request.
- 4.2 Once the Project Plan has been agreed and signed in accordance with clause 4.1(c), no amendment shall be made to it except in accordance with clause 7 and clause 16.

5. Our Obligations

- 5.1 We shall perform the Services with reasonable skill and care and we shall use reasonable endeavours to provide the Services and to deliver the Deliverables to you in accordance in all material respects with the Project Plan.
- 5.2 We shall use reasonable endeavours to meet any performance dates specified in the Project Plan, but any such dates shall be estimates only and time for delivery shall not be of the essence of the Contract.
- 5.3 We shall not be liable for any delays in implementing the Project Plan resulting from your failure to fulfil any of your obligations as set out in these Terms and/or the Project Plan. We reserve the right to invoice you for any additional expenses reasonably incurred by us as a result of such delays.
- 5.4 We shall, if we deem necessary, appoint Our Manager in respect of a Project. We shall use reasonable endeavours to ensure that the same person acts as Our Manager throughout the term of the Project, but we may replace him from time to time where reasonably necessary in the interests of our business.

6. Your Obligations

- 6.1 You shall:
- co-operate with us in all matters relating to the Services and appoint Your Manager in relation to a Project, who shall have the authority contractually to bind you on matters relating to that Project, and through whom questions and enquiries relating to the Services or Deliverables will be channelled;
 - provide for us, our agents, sub-contractors and employees, in a timely manner and at no charge, such access to your premises, office accommodation, data and such other facilities as reasonably requested by us;
 - provide, in a timely manner, such Client Materials and other information as we may request and ensure that it is accurate in all material respects;
 - be responsible (at your own cost) for preparing the relevant premises for the supply of the Services;
 - inform us of all health and safety rules and regulations and any other reasonable security requirements that apply at your premises;
 - ensure that all Your Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms with all standards reasonably requested by us in order for us to perform the Services;
 - obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation and/or use of Our Equipment, the use of Client Materials and the use of Your Equipment insofar as such licences, consents and legislation relate to your business, premises, staff and equipment in all cases before the date on which the Services are to start; and
 - provide us with written feedback on such stages of the Project as we may specify, for example via our Client Zone.
- 6.2 If our performance of our obligations under the Contract is prevented or delayed by any act or omission by you, your agents, sub-contractors or employees, we shall not be liable for any costs, charges or losses sustained or incurred by you arising directly or indirectly from such prevention or delay.
- 6.3 You shall be liable to pay to us, on demand, all reasonable costs, charges or losses sustained or incurred by us (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of your obligations under the Contract, subject to us confirming such costs, charges and losses to you in writing.
- 6.4 You shall not, without our prior written consent, at any time from the date of the Contract to the expiry of six months after the last date of supply of the Services, solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged as our

employee or sub-contractor of ours in the provision of the Services.

- 6.5 Any consent given by us in accordance with clause 6.4 shall be subject to you paying to us a sum equivalent to the higher of: (i) 25% of the then current annual remuneration of our employee or sub-contractor; (ii) the sum we initially paid to a recruitment agency upon the appointment of the relevant employee or subcontractor; or (iii) 25% of the annual remuneration to be paid by you to that employee or sub-contractor.

7. Change Control

- 7.1 Your Manager and Our Manager shall make contact at least once every month (or at such other intervals as we shall request) to discuss matters relating to the Services. If either party wishes to increase the scope or nature of the Services, it shall submit details of the requested change to the other in writing.
- 7.2 If either party requests an increase to the scope or nature of the Services, we shall, within a reasonable time, provide a written estimate to you of:
- the likely time required to implement the change;
 - any variations to our charges arising from the change;
 - the likely effect of the change on the Project Plan; and
 - any other impact of the change on the terms of the Contract.
- 7.3 We may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If we request a change to the scope of the Services for any other reason, you shall not unreasonably withhold or delay consent to it provided that such changes do not materially affect the nature or quality of the Services.
- 7.4 If you wish us to proceed with any increase in scope requested by you, we have no obligation to do so unless and until we and you have agreed in writing the necessary variations to our charges, the Project Plan and any other relevant terms of the Contract to take account of the change.
- 7.5 We may charge for our time spent in assessing a request for change from you on a time and materials basis in accordance with clause 8.

8. Charges and Payment

- 8.1 Clause 8.2 shall apply if we provide the Services on a time and materials basis. Clause 8.3 shall apply if we provide the Services for a fixed price. The remainder of this clause 8 shall apply in either case.
- 8.2 Where the Services are provided on a time and materials basis:
- the charges payable for the Services shall be calculated in accordance with our standard daily fee rates, as amended from time to time;
 - our standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, generally worked between 8.30 am and 5.30 pm on weekdays (excluding public holidays), although the exact timings may vary;
 - we shall be entitled to charge an overtime rate of 150% of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom we engage on the Project outside the hours referred to in clause 8.2(b);
 - all charges quoted to you shall be exclusive of VAT which we shall add to our invoices at the appropriate rate;
 - unless otherwise agreed, we shall invoice you monthly in arrears for our charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 8.2.
- 8.3 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Project Plan. The total price shall be paid to us (without deduction or set-off) in full or in any instalments as are set out in the Project Plan. At the end of a period specified in the Project Plan in respect of which an instalment is due, we shall invoice you for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in clause 8.4.
- 8.4 Any fixed price and daily rate contained in the Project Plan excludes:
- the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom we engage in connection with the Services, the cost of any materials and the cost of Third Party Products reasonably and properly provided by third parties and required by us for the supply of the Services. Such expenses, materials and third party services shall be invoiced by us; and
 - VAT, which we shall add to our invoices at the appropriate rate, where applicable.
- 8.5 Unless agreed otherwise in the Project Plan, you shall pay each invoice submitted to you by us, immediately upon (meaning within two Business Days of) receipt in full and in cleared funds.
- 8.6 Without prejudice to any other right or remedy that we may have, if you fail to pay us on the due date, we may:
- charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of The Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and we may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or
 - suspend all Services until payment has been made in full.
- 8.7 Time for payment shall be of the essence of the Contract.
- 8.8 All sums payable to us under the Contract shall become due immediately on its termination, despite any other provision. This clause 8.8 is without prejudice to any right to claim for interest under the law, or any such right under this agreement or the Contract.
- 8.9 We may, without prejudice to any other rights we may have, set off any of your liability to us against any of our liability to you.
- 8.10 Any deposits or initial payments are non-refundable, save as otherwise agreed by us in writing.



9. Intellectual Property Rights

- 9.1 As between you and us, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials (but not the Client Materials) shall be owned by us, Subject to clauses 9.2, 9.3 and 9.4, and to payment by you of all sums due to us under any Contract, we:
- license all such rights, other than the Bespoke Items (as defined in clause 9.2), to you on a non-exclusive, non-transferrable, worldwide basis to such extent as is necessary to enable you to make reasonable use of the Deliverables and the Services. Such licence shall be free of charge unless the Deliverables include a content management system in any configuration, and/or any Website Software in which case you will be required to pay an annual licence fee and may be required to enter into a separate licensing agreement. If these Terms or the Contract is terminated, this licence will automatically terminate, unless otherwise agreed in writing; and
 - transfer to you ownership of all Intellectual Property Rights in the Bespoke Items, subject to you agreeing to license back to us the Intellectual Property Rights so transferred to you, so as to enable us to perform the Services required of us under any Contract.
- 9.2 For the purposes of this clause 9 'Bespoke Items' means any graphic design, such as logos and brochures, and the Website's 'look and feel' and related Front End Code, prepared by us to your specific requirements and forming part of the final Design Concept under the provisions of Schedule 1 paragraph 3.8. Specifically excluded from 'Bespoke Items' are our content management system, any Website Software, any interactive animation, the pagination and layout of any graphics, and the designs associated with a virtual tradeshow or any white-labelled product (unless it is agreed in the Project Plan that bespoke graphics are to be created and the Intellectual Property Rights in such tradeshow designs are to be transferred to you).
- 9.3 For the avoidance of doubt, we retain ownership of the architecture and prototype of any graphic design or Website designed for you (which we may re-use in the same or similar structure and layout), together with underlying Website Software (including Back End Code) and any other Pre-Existing Materials, including, but not limited to our content management system and any interactive animation.
- 9.4 You acknowledge that, where we do not own any Pre-existing Materials (other than your Client Materials), your use of rights in Pre-existing Materials (such as in the case of any Third Party Products) is conditional on our obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle us to license such rights to you.

10. Confidentiality and Our Property

- 10.1 You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to you by us, our employees, agents or sub-contractors and any other confidential information concerning our business or our products or services which you may obtain. You shall restrict disclosure of such confidential material to such of your employees, agents or sub-contractors as need to know the same for the purpose of discharging our obligations to us, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind you.
- 10.2 All materials, equipment and tools, drawings, specifications and data supplied by us to you (including Pre-existing Materials and Our Equipment) shall, at all times, be and remain our exclusive property, but shall be held by you in safe custody at your own risk and maintained and kept in good clause by you until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.
- 10.3 This clause 10 shall survive termination of this agreement, however arising.

11. Limitation of Liability

- 11.1 This clause 11 set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:
- any breach of the Contract;
 - any use made by you of the Services, the Third Party Products, the Deliverables or any part of them; and
 - any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.2 All warranties, clauses and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Terms limits or excludes our liability:
- for death or personal injury resulting from negligence; or
 - for any damage or liability incurred by you as a result of our fraud or fraudulent misrepresentation.
- 11.4 Subject to clause 11.2 and clause 11.3 we shall not be liable for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any special, indirect or consequential loss or damage or for any issues arising in respect of Third Party Products.
- 11.5 Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of any Contract shall be limited to the price paid or payable in the twelve months immediately preceding any claim for the Services for the particular element of the Project to which the claim relates.

12. Data Protection

- 12.1 You acknowledge and agree that details of your name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of us in connection with the Services.
- 12.2 We warrant that, to the extent we process any Personal Data on your behalf:
- we shall act only on your instructions; and
 - we have in place appropriate technical and organisational security measures against unlawful processing of Personal Data and against accidental loss or destruction of,

or damage to, Personal Data.

- 12.3 You warrant and undertake to us that:
- your Personal Data has been and shall be obtained and processed (in so far as your Personal Data has been processed) lawfully;
 - the Services to be provided by us will be entirely consistent with and appropriate to the specified and lawful purposes for which you have notified under the Data Protection Act 1998 for your Personal Data (Notified Purposes);
 - you have not and will not during the continuance of any Contract use or disclose your Personal Data or any part of it in a manner incompatible with the Notified Purposes;
 - your Personal Data is adequate, relevant and not excessive in relation to the Notified Purposes; and
 - your Personal Data is accurate and you shall keep your Personal Data fully up to date at all times during the continuance of any Contract.
- 12.4 You shall indemnify us against any loss or damage which we may sustain or incur as a result of any breach by you of the provisions of this clause 12.

13. Termination

- 13.1 Unless the nature of the Services to be provided requires otherwise and is specified in the Project Plan, subject to clause 13.2, the Contract shall terminate automatically on completion of the Project in accordance with the Project Plan.
- 13.2 Without prejudice to any other rights or remedies which the parties may have and where the nature of the Services to be provided is on an ongoing basis, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:
- the other party commits a material breach of any of these Terms or the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
 - an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party;
 - an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
 - a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets;
 - the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;
 - the other party ceases, or threatens to cease, to trade; or
 - the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 13.3 On termination of these Terms or the Contract for any reason:
- you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt;
 - you shall (unless otherwise agreed by us), within 10 Business Days return to us all of Our Equipment, Pre-existing Materials and Deliverables (other than Bespoke Items which have transferred to you under clause 9.1(b)). If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned or repossessed, you shall be solely responsible for their safe keeping;
 - we shall use our best endeavours to make available to you for a period of three months after termination any artwork we have prepared for you as part of the Services, but you acknowledge that we cannot retain such materials indefinitely and any request for such artwork after the said three month period may not be possible or may be subject to additional fees for retrieving such materials from archiving or recreating deleted files; and
 - the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

14. Force Majeure

We shall have no liability to you under the Contract if we are prevented from or delayed in performing our obligations under the Contract or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including strikes, lock-outs or other industrial disputes (whether involving our workforce or that of any other party), failure of a utility service or transport network, power outage or electrical failure, theft of computers or related equipment, hostile computer act, telecommunications failures, non-availability of third party data centres, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (including the suppliers of any Third Party Products).

15. Publicity

- 15.1 All media releases, public announcements and public disclosures by either party relating to the Contract or its subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved jointly by the parties prior to release.
- 15.2 Notwithstanding clause 15.1, you acknowledge that we may use your name, company name, any Design Concepts (whether or not in draft, accepted or final form) in our portfolio, presentations and other marketing material, and any Website Software into perpetuity to show clients and potential clients examples of our work for marketing purposes.



16. Variation

Subject to clause 4 and clause 7, no variation of the Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.

17. Waiver

- 17.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 17.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

18. Severance

- 18.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 18.3 The parties agree, in the circumstances referred to in clause 18.1 and if clause 18.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

19. Status of Pre-Contractual Statements

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and clauses or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

20. Assignment

- 20.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under the Contract.
- 20.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract.

21. No Partnership or Agency

- 21.1 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. Rights of Third Parties

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

23. Notices

- 23.1 Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery.
- 23.2 A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this clause 23 is not within business hours (meaning 9.00 am to 5.30 pm on a Business Day), at 9.00 am on the first Business Day following delivery.
- 23.3 To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

24. Dispute Resolution

- 24.1 If any dispute arises in connection with these Terms or any Contract, directors or other senior representatives of the parties with authority to settle the dispute will, within 14 days of a written request from one party to the other, meet at our offices in a good faith effort to resolve the dispute.
- 24.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.
- 24.3 To initiate the mediation a party must give notice in writing (ADR notice) to the other party(ies) to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR notice.
- 24.4 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

25. Governing Law and Jurisdiction

- 25.1 These Terms, the Contract and any dispute or claim arising out of or in connection with them or their subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 25.2 Subject to clause 24, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms, the Contract or their subject matter.

Schedule 1

1. Website Design and Hosting Services

- 1.1 Where any of the Services to be provided by us, as specified in the Project Plan, comprise website design and/or hosting services, the provisions of this paragraph 1 shall apply.
- 1.2 If we are to provide website design Services we will design, develop and deliver the Website and, where provided in the Project Plan, host the Website on a Server.
- 1.3 Once we have completed the design and development of the Website (the URL of which is specified in the Project Plan), we shall run such acceptance tests as we shall reasonably determine (Acceptance Tests) to ascertain whether the Website complies in all material respects with the Project Plan.
- 1.4 Acceptance of the Website shall occur when the Website has passed the Acceptance Tests.
- 1.5 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission by you, or by one of your sub-contractors or agents for whom we have no responsibility (Non-Supplier Defect), the Website shall be deemed to have passed the Acceptance Tests, notwithstanding such Non-Supplier Defect.
- 1.6 We shall provide you with assistance reasonably requested by you in remedying such Non-Supplier Defects by supplying such additional services or products as we see fit in our sole discretion. You shall pay us in full for all such additional services and products at our then current fees and prices.
- 1.7 Acceptance of the Website shall be deemed to have taken place upon the occurrence of any of the following events:
- you use any part of the Website for any revenue-earning purposes or to provide any services to third parties other than for test purposes;
 - the Website is can be accessed and/or viewed by the public for more than 5 Business Days; or
 - you unreasonably delay the start of the relevant Acceptance Tests or any retests for a period of five working days from the date on which we are ready to commence running such Acceptance Tests or retests.
- 1.8 We warrant that the Website will perform substantially in accordance with the Project Plan for a period of three months from acceptance. If the Website does not so perform, we shall, for no additional charge, carry out any work necessary in order to ensure that the Website complies substantially in accordance with the Project Plan.
- 1.9 The warranty set out in paragraph 1.8 shall not apply to the extent that any failure of the Website to perform substantially in accordance with the Project Plan is caused by you or your Client Materials.
- 1.10 Websites we produce will be supported in Microsoft Internet Explorer 7+, Apple Safari 3+, and Mozilla Firefox 3+. We will provide 'gracefully degrading' support on-request for Microsoft Internet Explorer 6 and Mozilla Firefox 2.
- 1.11 All Intellectual Property Rights in the Website are owned in accordance with the provisions of clause 9 of these Terms.
- 1.12 You shall indemnify us against all damages, losses and expenses arising as a result of any claim that the Client Materials infringe the Intellectual Property Rights of a third party.
- 1.13 Where we have so agreed in the Project Plan we shall update the Website with Client Materials provided by time to time by you subject to you paying such hourly rate as shall be agreed in the Project Plan.
- 1.14 Where you gain access to the Server to update the Website other than via any content management system or other technology provided by us, if any problems arise by reason of your actions, we are under no obligation to provide support to you, although we may be prepared to do so, subject to your payment of our standard hourly charges.
- 1.15 You shall ensure that any Client Materials to be included on the Website do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights (Inappropriate Content)).
- 1.16 You acknowledge that we have no control over any content placed on the Website by visitors to the Website and we do not purport to monitor the content of the Website. We reserve the right to remove content from the Website where we reasonably suspect that such content is Inappropriate Content.
- 1.17 You shall indemnify us against all damages, losses and expenses arising as a result of any action or claim that the Client Materials constitute Inappropriate Content.
- 1.18 We may include the statement 'Designed and built by New Brand Vision Group' or words to similar effect on the home page of the Website as an active hyperlink to www.newbrandvision.com for a minimum period of twenty four months.
- 1.19 On expiry or termination of the Contract, other than by us, we shall:
- return to you your Client Materials and shall provide to you an electronic copy of the Website (including all content on the Website); and
 - provide such assistance as is reasonably requested by you to transfer the hosting of the Website from us to you or to another service provider, subject to payment of our reasonable expenses.
- 1.20 Whilst we shall use our best endeavours to ensure that if the Website is hosted by or via us it is available at all times, you acknowledge that such hosting is subject to the right of any third party provider of connectivity of any hosting services to the internet to temporarily suspend such connection, to make any modification, change, addition to, or replacement of that third party's equipment, network or software where this is required to confirm with any applicable safety or any other statutory or legal requirements, or at any other time. Any target hosting service level information provided to you is for guidance only.
- 1.21 You acknowledge that it is impossible to provide any Website hosting services free of faults or uninterrupted and that we do not give any undertaking to do so.
- 1.22 The period of web hosting, as specified in the Project Plan, commences from the first day that the Website is provided for Acceptance Tests.
- 1.23 You accept that website visitor traffic levels may vary and that we may deem it necessary to increase or change the hosting server setup to handle with increases or larger than



anticipated levels of traffic. You accept that this may incur, and that additional charges may be levied to you to cover such upgrades. Such additional costs would be subject to your prior written approval.

- 1.24 The hosting agreement is provided on annual rolling basis unless otherwise detailed in the Project Plan. To prevent hosting from rolling automatically to the next term, notice must be served a minimum of ninety days in advance of the end of the then current hosting term. Any specific and differing terms detailed in the Project Plan replace or, where no conflicts occur, are in addition to the terms of this clause.

2. Trade Mark and Domain Name Services

- 2.1 Where any of the Services to be provided by us, as specified in the Project Plan, comprise advice and services in relation to trade mark registration or domain name registration, the provisions of this paragraph 2 shall apply.
- 2.2 Where explicitly stated and agreed in the Project Plan we shall use our best endeavours to obtain registration of any domain name(s) or trade mark(s) requested by you.
- 2.3 You warrant that you are the owner, or duly authorised licensee, of all Intellectual Property Rights and other rights for any trade mark or domain name for which you request we assist you to obtain registration.
- 2.4 You acknowledge that we cannot guarantee that any name or design requested by you will be available or approved for use and/or registration. You are required to carry out your own enquiries in this respect, although we may assist you at your request and your cost.
- 2.5 We reserve the right to require you to select a replacement domain name or trade mark and we may suspend the provision of the Services if, in our opinion, there are reasonable grounds for us to believe that your choice of name is, or is likely to be, in breach of the provisions of this paragraph 2.
- 2.6 We do not represent warrant or guarantee that any domain name or trade mark applied for by you or on your behalf will be registered in your name or is capable of being registered by you, or that use of such trade mark or domain name by you will not infringe any Intellectual Property Rights or other rights of any third party. Accordingly, we will not be liable for any action taken by you in respect of any requested domain name or trade mark prior to registration. Any fees payable to us for the Services are not conditional upon obtaining any such registrations.
- 2.7 The registration of any domain name or trade mark and its ongoing use is subject to the relevant naming authority's or trade mark registration body's terms and conditions, as appropriate, and you undertake to comply with such terms and conditions.
- 2.8 You acknowledge that your contact details, including details which may constitute Personal Data (such as name, address, telephone numbers and email address) will be passed to the relevant domain naming authority. You acknowledge that it may be a condition for registration with such a naming authority for such information to appear on that naming authority's publicly-accessible 'WHOIS' database and you hereby consent to your Personal Data being used in such a manner. We reserve the right, however, to register any domain name under our name.
- 2.9 You hereby irrevocably waive any claims against us in respect of any decision by any trade mark registration body or domain naming authority to refuse to register any trade mark or domain name and, without limitation, you acknowledge that any application or other administration fee payable is non-refundable in any event.
- 2.10 We accept no responsibility for the use of any domain name or trade mark by you and we shall take no part in any dispute between you and any third party in respect thereof. We reserve the right, on becoming aware of a dispute concerning a domain name, at our sole discretion and without giving any reason, to either suspend or cancel the relevant service associated with the domain name, and/or to make such representations to the relevant naming authority as we deem appropriate.

3. Graphic and Other Design Services

- 3.1 Where any of the Services to be provided by us, as specified in the Project Plan, comprise graphic and other design services, the provisions of this paragraph 3 shall apply.
- 3.2 Within 20 Business Days of approval of the Project Plan in accordance with the provisions of clause 4 or at such other time as agreed by you and by us in the Project Plan, we shall provide you with a draft of our suggested designs, whether in storyboard, graphic, report or electronic format (**Design Concepts**).
- 3.3 Within 10 Business Days of your receipt of the draft Design Concepts, or at such other time as agreed by both parties in the Project Plan, you shall notify us in writing either:
- of your approval of one of the draft Design Concepts, in which case the selected draft Design Concept shall become the final Design Concept;
 - of suggested changes which you require to the draft Design Concepts, in which case we shall, within a further 10 (approximately) Business Days provide you with a further draft of the Design Concepts incorporating the suggested changes.
- 3.4 You acknowledge that any changes to the Design Concepts arising in respect of paragraph

3.3(b) may incur additional charges if the time or number of changes engaged by us in carrying out such changes exceeds the total time or number of changes allocated for Design Concept reviews as set out in the Project Plan.

- 3.5 If you reasonably believe that the further draft of the Design Concepts provided in accordance with paragraph 3.3(b) is not satisfactory, you may at your own cost revise the draft Design Concepts and present them to us within five Business Days of the receipt of the revised draft. Upon such receipt we will notify you in writing within a further five Business Days whether such suggested alterations to the draft Design Concepts are feasible in whole or in part and the additional cost implications, if any, of the changes proposed by you.
- 3.6 Within two Business Days of your receipt of our comments under paragraph 3.3 above you shall either:
- approve the suggestions and the amended draft Design Concept selected by you shall be the final Design Concept; or
 - suggest further amendments to the draft Design Concepts in accordance with the provisions of paragraph 3.5 and that procedure shall continue until such time as the final Design Concept has been approved in accordance with the provisions of this paragraph 3.6.
- 3.7 You are required to print the final artwork comprising the final Design Concept and fax such artwork back to us, by way of acceptance of it. In the event that you have not so responded within 10 Business Days indicating your acceptance or rejection, you will be deemed to have accepted the final Design Concept on the 11th Business Day following receipt.
- 3.8 All Intellectual Property Rights in the final Design Concept shall be transferred to you following payment of all sums due from you to us. Following any such assignment, you hereby grant to us a non-exclusive licence of such Intellectual Property Rights in the final Design Concept for the purposes of providing any future or outstanding Services in accordance with the terms of the relevant Project Plan. We retain the ownership of all Intellectual Property Rights in all Design Concepts other than the final Design Concept, and you acknowledge that we can use the retained Design Concepts for any purpose or other client.
- 3.9 You shall be responsible for notifying us prior to the preparation of the Project Plan of any specific advertising requirements or restrictions relevant to the particular profession, trade or industry in which you operate insofar as they affect the Services we are to provide. We shall have no obligation to investigate or verify any such advertising requirements or restrictions and we shall have no liability to you in the event that any information provided by you to us in this respect proves to be inaccurate.

4. Other Services

- 4.1 Where the Services to be provided (whether by us or as Third Party Products) comprise such marketing campaign aspects as pay-per-click advertising, search engine optimisation or assisting you with your product placement or marketing strategy, you acknowledge that we cannot guarantee or quantify the results of any such campaign and you use such Services at your own risk.
- 4.2 Where the Services result in the creation of any additional Intellectual Property Rights (such as, but not limited to, Intellectual Property Rights in software or interactive applications) not referred to in these Terms or the Project Plan, such Intellectual Property Rights shall, unless we agree in writing, vest automatically in us. Any licence of such Intellectual Property Rights shall be on such terms as you and we shall agree.

5. Third Party Products

- 5.1 Where we agree as part of the Services to provide Third Party Products, these shall be supplied in accordance with the relevant licensor's or third party's standard terms and conditions. You acknowledge, for example, that the Website Software incorporates certain open source binaries that are licensed for use and are subject to restrictions pursuant to, and under separate agreements. By using these open source binaries you agree to be bound by and comply with the terms of those additional agreements. We give no warranty in relation to and have no liability in connection with your use of these open source binaries.
- 5.2 Where you use such Third Party Products, you do so on the basis that we appoint the relevant supplier of the Third Party Products as your agent, with a direct contractual relationship arising between you and the relevant supplier. Whilst we shall all reasonable endeavours to ensure that any Third Party Products are supplied to your satisfaction, we accept no liability in this respect and you are responsible for checking compliance with your requirements and seeking any legal redress against the supplier in the event that any problems arise.
- 5.3 The estimated costs of any such Third Party Products included in the Project Plan are for guidance purposes only and you shall be liable to indemnify us for our full costs in this respect.
- 5.4 Where the Third Party Products include photography, illustration, painting or digital animation, your use of such photography, illustration, painting or digital animation will usually be on a copyright licence basis only, unless otherwise agreed by us in writing.

