

SIMPLY SMARTER MARKETING LIMITED (TRADING AS Simply Smarter Marketing) TERMS AND CONDITIONS OF BUSINESS



SIMPLY SMARTER
MARKETING

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

Bespoke New Materials, means any materials designed, prepared or created by or on behalf of Simply Smarter Marketing further to a specific commission by the Client for the use of the Client only for the purpose of or pursuant to the Consultancy excluding, either in whole or in part, Simply Smarter Marketing Materials or any Third Party Materials.

Bespoke Software, means all software written, created, or developed by or on behalf of Simply Smarter Marketing for the purposes of or pursuant to the Consultancy, excluding, either in whole or in part, Simply Smarter Marketing Software, Third Party Software and any already existing modules and/or codes thereof.

Business Day, means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Client, means the person or company who enters into an arrangement to purchase Consultancy services from Simply Smarter Marketing as set out in the Proposal.

Client Data, means data, in whatever form, owned, held and/or controlled by the Client which is made available to Simply Smarter Marketing or is otherwise created, collated or collected and/or accessed by Simply Smarter Marketing in connection with the Consultancy.

Client Materials, means any materials provided by the Client to Simply Smarter Marketing.

Client Software, means all software, the Intellectual Property Rights in which are owned by the Client, or licensed to the Client by a Third Party (other than for the purposes of or pursuant to the Consultancy) which are required to be used by Simply Smarter Marketing for the purposes of or pursuant to the Consultancy.

Conditions, means these terms and conditions as amended from time to time in accordance with clause 14.8.

Confidential Information, means all confidential information relating to the Client and/or Simply Smarter Marketing which the disclosing party or its representatives directly or indirectly discloses, or makes available, to the receiving party or its representatives. This includes all confidential or proprietary information relating to:

- a) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the Disclosing Party; and
- b) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Disclosing Party; and
- c) any information, findings, data or analysis derived from Confidential Information; and
- d) any other information that is identified as being of a confidential or proprietary nature.

Contract, means the contract between Simply Smarter Marketing and the Client for the supply of Consultancy services in accordance with these Conditions and the Proposal.

Contract Commencement Date, means the date set out in the Proposal.

Contract Term, means the term set out in the Proposal.

Consultancy Fees, means the fees payable by the Client for the supply of the Consultancy in accordance with clause 7 and the Proposal, including Materials but excluding Expenses.

Consultancy, means the Consultancy, including the Deliverables, provided by Simply Smarter Marketing to the Client as set out in the Proposal or as may be agreed in writing between the parties from time to time.

Consultancy Commencement Date, has the meaning given to it in the Proposal.

Data Controller, has the meaning set out in the Data Protection Legislation.

Data Protection Legislation, means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.

Data Subject, an individual who is the subject of Personal Data.

Deliverables, means all documents, products and materials developed by Simply Smarter Marketing or its agents, contractors and employees as part of or in relation to the Consultancy, including the deliverables specified in the Proposal.

Expenses, means reasonable applicable operational expenses; for example: travel, communications, photocopying, press cuttings service, media distribution, media subscriptions, and other disbursements.

GDPR, means the General Data Protection Regulation ((EU) 2016/679).

Intellectual Property Rights, means all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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.

Simply Smarter Marketing, means Simply Smarter Marketing Limited T/A Simply Smarter Marketing or Grey Geeks or SBL Media, a company incorporated in England and Wales, registration number 6917637, having its registered office at The Mill Building, Chatsworth Road, Worthing BN11 1LY, and includes its employees, agents, consultants and subcontractors.

Simply Smarter Marketing Materials, means all materials, equipment, documents and other property of Simply Smarter Marketing, the Intellectual Property Rights in which are owned by Simply Smarter Marketing and which are either Deliverables or are incorporated in Deliverables, excluding Third Party Materials and New Materials and including Pre-existing Intellectual Property Rights.

Simply Smarter Marketing Software, means software which is proprietary to Simply Smarter Marketing and which has not been created by Simply Smarter Marketing pursuant to or in connection with the Consultancy.

New Materials, means materials designed, prepared or created by or on behalf of Simply Smarter Marketing further to a specific commission by the Client for the use of the Client only for the purpose of or pursuant to the Consultancy **excluding** Simply Smarter Marketing Materials, Client Materials, Third Party Materials and materials designed, prepared or created by or on behalf of Simply Smarter Marketing whether new or otherwise in the ordinary course of providing the Consultancy.

Personal Data, has the meaning set out in the Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which Simply Smarter Marketing is providing Consultancy under the Contract.

Pre-existing Intellectual Property Rights, means Intellectual Property Rights existing before the Contract Commencement Date.

Processing and Process, has the meaning set out in the Data Protection Legislation.

Proposal, means the form to be prepared by Simply Smarter Marketing and completed and signed by the Client and, in the absence of such form, the specifications as shall be agreed between Simply Smarter Marketing and the Client in writing from time to time.

Software, means the computer programs used by Simply Smarter Marketing from time to time and any modification which is acquired by the Client during the subsistence of this Contract.

Third Party Materials, means all materials which are proprietary to any third party and which are either Deliverables or are incorporated in Deliverables, excluding Simply Smarter Marketing Materials and New Materials.

Third Party Software, means software which is proprietary to any third party and which has not been created pursuant to or in connection with the Consultancy.

UK Data protection legislation, means any data protection legislation from time to time in force in the UK, including the Data Protection Act 1998 or 2018, or any successor legislation.

1.2 Construction. In these Conditions, the following rules apply:

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body whether or not having separate legal personality;
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to

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

- 1.2.4 any phrase introduced by the terms **including, include, in particular**, or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to **writing** or **written** includes emails.

2. Basis of contract

- 2.1 The Proposal constitutes an offer by the Client to purchase Consultancy in accordance with these Conditions.
- 2.2 The offer to purchase the Consultancy from Simply Smarter Marketing shall be deemed to be accepted and the Contract shall come into existence on the Contract Commencement Date as indicated in the Proposal or, in the absence of a Proposal, signed or otherwise, on the date in which Simply Smarter Marketing performed any act in the provision of any of the Consultancy.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Simply Smarter Marketing, and any descriptions or illustrations contained in Simply Smarter Marketing's promotional printed matters, website, are issued or published for the sole purpose of giving an approximate idea of the Consultancy described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 Any quotation given by Simply Smarter Marketing shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue and all amounts quoted by Simply Smarter Marketing under the Contract are exclusive of Value Added Tax as chargeable from time to time.

3. Commencement and duration

- 3.1 Simply Smarter Marketing shall provide the Consultancy to the Client on the terms and conditions of this Contract.
- 3.2 Simply Smarter Marketing shall provide the Consultancy to the Client from the date specified in the Proposal and shall continue to provide the Consultancy, unless terminated:
 - 3.2.1 as provided by the terms of this agreement; or
 - 3.2.2 by either party giving to the other not less than 20 Business Days prior written notice.
- 3.3 The parties shall not contract to provide any further Deliverables after the date on which notice to terminate is provided.

4. Proposal

- 4.1 The Proposal shall be agreed by the parties in the following manner:
 - 4.1.1 Simply Smarter Marketing shall provide the Proposal to the Client for signing;
 - 4.1.2 once the Proposal has been agreed and signed, no amendment shall be made, except as agreed by the parties in writing.
- 4.2 Any additional services requested by the Client and agreed to be provided by Simply Smarter Marketing outside the scope of the initial Proposal, unless otherwise agreed by the parties, shall be provided in accordance with these Conditions.

5. Supply of Consultancy

- 5.1 Simply Smarter Marketing shall supply the Consultancy to the Client in accordance with the Proposal in all material respects.
- 5.2 Simply Smarter Marketing shall use all reasonable endeavours to meet any performance dates specified in the Proposal or otherwise, but any such dates shall be estimates only and time shall not be of the essence for performance of the Consultancy.
- 5.3 Simply Smarter Marketing shall have the right to make any changes to the Consultancy which are necessary to comply with any applicable law, regulation, or which do not materially affect the nature or quality of the Consultancy, and Simply Smarter Marketing shall notify the Client in any such event.
- 5.4 Simply Smarter Marketing warrants to the Client that the Consultancy will be provided using reasonable care and skill.

6. Client's obligations

- 6.1 The Client shall:
 - 6.1.1 ensure that the terms of the Proposal (and any information it provides) are complete and accurate;
 - 6.1.2 co-operate with Simply Smarter Marketing in all matters relating to the Consultancy;
 - 6.1.3 provide Simply Smarter Marketing, its employees, agents, consultants and subcontractors, as reasonably required by Simply Smarter Marketing, with access to Client Data, Client

Materials, Client Software and the Client's premises, office accommodation and other facilities, and ensure that any access to the premises that may require permission from a third party is obtained in advance;

- 6.1.4 provide Simply Smarter Marketing with such information and materials as Simply Smarter Marketing may reasonably require in order to supply the Consultancy, and ensure that such information is accurate in all material respects;
- 6.1.5 prepare the Client's premises for the supply of the Consultancy;
- 6.1.6 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Consultancy is to start;
- 6.1.7 keep and maintain all Simply Smarter Marketing Materials at the Client's premises in safe custody at its own risk, maintain Simply Smarter Marketing Materials in good condition until returned to Simply Smarter Marketing, and not dispose of or use Simply Smarter Marketing Materials other than in accordance with Simply Smarter Marketing's written instructions or authorisation.
- 6.2 If Simply Smarter Marketing's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
 - 6.2.1 Simply Smarter Marketing shall, without limiting its other rights or remedies, have the right to suspend performance of the Consultancy until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays Simply Smarter Marketing's performance of any of its obligations;
 - 6.2.2 Simply Smarter Marketing shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Simply Smarter Marketing's failure or delay to perform any of its obligations as set out in this clause 6.2; and
 - 6.2.3 the Client shall reimburse Simply Smarter Marketing on written demand for any costs or losses sustained or incurred by Simply Smarter Marketing arising directly from the Client Default, regardless of whether the Consultancy is completed.
- 6.3 The Client shall not, unless otherwise agreed in writing, at any time from the Commencement Date to the expiry of six months after the last date of the supply of the Consultancy, solicit or entice away from Simply Smarter Marketing or employ or contract with or attempt to employ or contact with any person who is, or who has been, engaged as an employee or subcontractor of Simply Smarter Marketing in the provision of the Consultancy for the Client.

7. Consultancy Fees and payment

- 7.1 The Consultancy Fees to be paid for the Consultancy are set out in the Proposal.
- 7.2 Unless otherwise notified, the hourly rates charged by Simply Smarter Marketing are those set out in the Proposal.
- 7.3 Simply Smarter Marketing reserves the right to amend the hourly rates set out in the Proposal (or otherwise agreed by the parties) and will notify the Client in writing at least 20 Business Days in advance of any change to the hourly rates coming into effect. Should the Client not agree to such change, the Client shall have the option within 10 Business Day from the date Simply Smarter Marketing provides notice to the Client of the change to the hourly rates, to terminate this Contract. Upon termination, Simply Smarter Marketing will cease to provide the Consultancy and the Client agrees to pay for all Consultancy Fees and Expenses incurred by Simply Smarter Marketing up until termination.
- 7.4 If Simply Smarter Marketing cannot provide a fixed fee at the outset of the Consultancy, Simply Smarter Marketing will endeavour, if possible, to provide an estimate of fees. However, where the scope of work required of Simply Smarter Marketing is larger than initially anticipated and/or not covered either by such estimate or by a fixed fee quote provided, a new estimate/fixed fee quote will be provided. This may happen where, for example, there are:
 - 7.4.1 additional office/telephone meetings/discussions;
 - 7.4.2 variations to the initial instructions; and/or
 - 7.4.3 complications which were not or could not have been foreseen at the initial stage of the Consultancy.
- 7.5 Simply Smarter Marketing will then advise the Client in advance of any additional or varied work that is required and agree the new estimate/fixed fee quote with the Client.
- 7.6 Simply Smarter Marketing may ask the Client to make a payment on account of Consultancy Fees and Expenses of up to 50% of the total estimated Consultancy Fee (Deposit). If the Client fails



- to pay the Deposit to Simply Smarter Marketing, Simply Smarter Marketing may cease to work for the Client.
- 7.7 If:
- 7.7.1 Simply Smarter Marketing holds a Deposit which is not earmarked for any other purpose, Simply Smarter Marketing may apply such sum in satisfaction or (if insufficient funds are available) part-satisfaction of Simply Smarter Marketing unpaid Client invoices;
- 7.7.2 notwithstanding clause 6.2, the completion of the Consultancy is delayed for more than 20 Business Days due to an action or omission by the Client or on the Client's behalf, including but not limited to due to the need for the Client or for someone else on the Client's behalf to provide relevant documentation, peruse and comment on relevant drafts, sign relevant documents, then Simply Smarter Marketing reserves the right to charge the full fee quoted for the provision of the Consultancy.
- 7.8 Value Added Tax (VAT) will be added to the Consultancy Fees at the prevailing rate.
- 7.9 The Consultancy Fees for the Consultancy shall be invoiced by Simply Smarter Marketing and paid by the Client, all as set out in the Proposal, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by Simply Smarter Marketing, and time for payment shall be of the essence of the Contract.
- 7.10 Simply Smarter Marketing shall be entitled to charge the Client for any Expenses reasonably incurred by the individuals or third parties whom Simply Smarter Marketing engages in connection with the Consultancy.
- 7.11 Without limiting any other right or remedy of Simply Smarter Marketing, if the Client fails to make any payment due to Simply Smarter Marketing under the Contract by the due date for payment (**Due Date**), Simply Smarter Marketing shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current HSBC's base rate, accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 7.12 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against Simply Smarter Marketing in order to justify withholding payment of any such amount in whole or in part. Simply Smarter Marketing may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Simply Smarter Marketing to the Client.
- ## 8. Website development services
- 8.1 Simply Smarter Marketing Software is compatible with the latest versions of major browsers and latest versions of major smartphones at the point of instruction and will be supported in respect of a number of browsers, including:
- 8.1.1 Microsoft Edge;
- 8.1.2 Firefox;
- 8.1.3 Chrome;
- 8.1.4 Safari.
- 8.2 Simply Smarter Marketing does not guarantee that its website will work with every operating service and mobile device.
- 8.3 All websites created by Simply Smarter Marketing for each Client require hosting for such websites to function. Hosting is not included for any web projects Simply Smarter Marketing provides, unless otherwise provided for in the Proposal.
- 8.4 Hosting services are an additional cost which is required to be paid for annually and in advance of the following 12 months.
- 8.5 Invoices for hosting services will be issued to the Client 40 Business Days prior to renewal of the hosting services. If the invoice is not paid prior to the renewal of the hosting services then Simply Smarter Marketing reserves the right not to provide the hosting services.
- 8.6 Website and domain hosting services will be subject to separate terms and conditions which can be found on [our website](#). If the Client requires Simply Smarter Marketing to provide hosting services, the terms and conditions located on Simply Smarter Marketing's website will apply.
- ## 9. Intellectual Property Rights
- 9.1 Except as expressly set out in the Conditions, the Client shall not acquire any right, title or interest in or to the Intellectual Property Rights of Simply Smarter Marketing or its licensors, including Intellectual Property Rights in:
- 9.1.1 Simply Smarter Marketing Software;
- 9.1.2 Simply Smarter Marketing Materials;
- 9.1.3 the Third Party Software;
- 9.1.4 the Third Party Materials;
- 9.1.5 Simply Smarter Marketing's Pre-existing Intellectual Property Rights.
- 9.2 Simply Smarter Marketing shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Client or its licensors, including:
- 9.2.1 the Client Data;
- 9.2.2 the Client Software;
- 9.2.3 the Client Materials;
- 9.2.4 the Bespoke New Materials;
- 9.2.5 the Bespoke Software;
- 9.2.6 Client's Pre-existing Intellectual Property Rights.
- 9.3 The Intellectual Property Rights in all Bespoke New Materials and/or Bespoke Software shall belong to and vest in the Client unconditionally and immediately on payment of the Consultancy Fees. Simply Smarter Marketing hereby assigns, and shall, where possible, procure that all third parties who may have any right, title or interest in Bespoke New Materials and/or Bespoke Software shall assign, in each case by way of present assignment of future rights, all Bespoke New Materials and/or Bespoke Software absolutely to the Client with full title guarantee (free from all charges, encumbrances and other rights exercisable by third parties). Simply Smarter Marketing shall procure the waiver of any Moral Rights in or relating to any Bespoke New Materials and/or Bespoke Software.
- 9.4 All Intellectual Property Rights in or arising out of or in connection with the Consultancy other than the Bespoke New Materials and/or Bespoke Software shall be owned by Simply Smarter Marketing.
- 9.5 The Client hereby grants Simply Smarter Marketing a non-exclusive, non-transferable licence to use the Client Software, Client Materials and Client Data solely to the extent and for the period necessary for Simply Smarter Marketing to perform its obligations under the Conditions, such licence is to terminate no later than on the termination of the Contract. Simply Smarter Marketing shall comply with any terms or Proposal given by the Client from time to time in relation to the use of the Client Software, Client Materials and Client Data.
- 9.6 Simply Smarter Marketing represents that, at the time of delivering the Services, it has the necessary rights and licences to comply with its obligations under this Clause 9 and undertakes to execute, do and/or procure the execution or doing of such things as are reasonably necessary in order to achieve, perfect or record the assignment or grant of rights and licences in accordance with this Clause 9.
- 9.7 Any physical media forming part of any Deliverables shall be owned by the Client, and Simply Smarter Marketing hereby transfers and agrees to procure the transfer with full title guarantee (free from all charges, encumbrances and other rights exercisable by third parties) of all right, title and interest in such media to the Client.
- 9.8 The Client acknowledges that, in respect of any Third Party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on Simply Smarter Marketing obtaining a written licence from the relevant licensor on such terms as will entitle Simply Smarter Marketing to license such rights to the Client.
- ## 10. Confidentiality
- 10.1 Each party undertakes that it shall not at any time or at any time during the Contract, and for a period of 5 years after termination of the Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.
- 10.2 Each party may disclose the other party's Confidential Information:
- 10.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 10; and
- 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 10.4 This clause 10 shall survive termination of the Contract.
- 10.5 Despite clause 10.1, Simply Smarter Marketing shall, at its discretion and unless refused in writing by the Client, use the



Client's name, and the fact of the engagement in any of Simply Smarter Marketing's marketing, including on Simply Smarter Marketing's website or any printed form of marketing used by Simply Smarter Marketing.

11. Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 11.1 Nothing in these Conditions shall limit or exclude Simply Smarter Marketing's liability for:
 - 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 11.1.2 fraud or fraudulent misrepresentation; or
 - 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Consultancy Act 1982 (title and quiet possession).
- 11.2 Subject to clause 11.1:
 - 11.2.1 Simply Smarter Marketing shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 11.2.2 Simply Smarter Marketing's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the value of the Consultancy Fees paid under the Contract.
- 11.3 The terms implied by sections 3 to 5 of the Supply of Goods and Consultancy Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 This clause 11 shall survive termination of the Contract.

12. Termination

- 12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 12.1.1 the other party commits a material breach of the Contract and if such a breach is remediable fails to remedy that breach within 7 days of that party being notified in writing of the breach;
 - 12.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or being a company is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or being an individual is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or being a partnership has any partner to whom any of the foregoing apply;
 - 12.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than where a company for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 12.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party being a company other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 12.1.5 the other party being an individual is the subject of a bankruptcy petition or order;
 - 12.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 12.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party being a company;
 - 12.1.8 a floating charge holder over the assets of that other party being a company has become entitled to appoint or has appointed an administrative receiver;
 - 12.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 12.1.10 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.2 to clause 12.1.9 inclusive;

- 12.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 12.1.12 the other party being an individual dies or, by reason of illness or incapacity whether mental or physical, is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 12.2 Without limiting its other rights or remedies, Simply Smarter Marketing may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.
- 12.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 20 Business Days' written notice.
- 12.4 Without limiting its other rights or remedies, Simply Smarter Marketing shall have the right to suspend provision of the Consultancy under the Contract or any other contract between the Client and Simply Smarter Marketing if the Client becomes subject to any of the events listed in clause 12.1, or Simply Smarter Marketing reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

13. Consequences of termination

- 13.1 On termination of the Contract for any reason:
 - 13.1.1 the Client shall immediately pay to Simply Smarter Marketing all of Simply Smarter Marketing's outstanding unpaid invoices and interest and, in respect of Consultancy supplied but for which no invoice has been submitted, Simply Smarter Marketing shall submit an invoice, which shall be payable by the Client immediately on receipt;
 - 13.1.2 the Client shall return all of Simply Smarter Marketing Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then Simply Smarter Marketing may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 13.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 13.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. General

- 14.1 **Force majeure:**
 - 14.1.1 for the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Simply Smarter Marketing including, but not limited to, strikes, lock-outs or other industrial disputes (whether involving the workforce of Simply Smarter Marketing or any other party), failure of a utility service or transport network, 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 subcontractors;
 - 14.1.2 Simply Smarter Marketing shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.2 **Assignment and subcontracting:**
 - 14.2.1 Simply Smarter Marketing may, at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent;
 - 14.2.2 the Client shall not, without the prior written consent of Simply Smarter Marketing, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.3 **Notices:**
 - 14.3.1 Any legal notice or other communication given or made under this Agreement shall be in writing and may be given by either hand delivery, prepaid first-class post or email;
 - 14.3.2 Any such notice which is given in accordance with Clause 14.3.1 above shall be deemed to have been received by the other party in accordance with the contact details set out in the Proposal or at any such address or contact details as shall be provided by the parties in writing from time to time:
 - (a) at the time of delivery, if delivered by hand; or
 - (b) on the second Working Day following the day of sending the notice by prepaid first-class post.



14.4 Waiver:

- 14.4.1 a waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy;
- 14.4.2 unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 14.5 **Severance:**
- 14.5.1 if a court or any other competent authority finds that any provision or part of any provision of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected;
- 14.5.2 if any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 14.6 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 14.8 **Variation:** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions to the Contract, shall only be binding when agreed in writing and signed by Simply Smarter Marketing.
- 14.9 **Entire agreement:** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Simply Smarter Marketing which is not set out in the Contract.
- 14.10 **Implied terms:** These Conditions apply to the Contract and the Proposal to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

15. Data protection and data processing

- 15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this Clause 15, Applicable Laws means (for so long as and to the extent that they apply to Simply Smarter Marketing) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 15.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and Simply Smarter Marketing is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 15.3 Without prejudice to the generality of Clause 15.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to Simply Smarter Marketing for the duration and purposes of the Contract.
- 15.4 Without prejudice to the generality of Clause 15.1, Simply Smarter Marketing shall, in relation to any Personal Data processed in connection with the performance by Simply Smarter Marketing of its obligations under the Contract:
- 15.4.1 process that Personal Data only on the written instructions of the Client unless Simply Smarter Marketing is required by Applicable Laws to otherwise process that Personal Data;
- 15.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems

and Consultancy, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 15.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 15.4.4 not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:
- (a) the Client or Simply Smarter Marketing has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
- (c) Simply Smarter Marketing complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) Simply Smarter Marketing complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data.
- 15.4.5 assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 15.4.6 notify the Client without undue delay on becoming aware of a Personal Data breach;
- 15.4.7 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 15.4.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 15.
- 15.5 Simply Smarter Marketing may appoint a third-party processor of Personal Data under the Contract. In such case Simply Smarter Marketing may inform the Client prior to any such appointment.
- 15.6 Simply Smarter Marketing confirms that it will enter with the third-party processor into a written agreement incorporating terms which are the same or substantially similar to those set out in this Clause 15. As between the Client and Simply Smarter Marketing, Simply Smarter Marketing shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 15.
- 15.7 The Client agrees to indemnify, keep indemnified and defend at its own expense Simply Smarter Marketing against all costs, claims, damages or expenses incurred by Simply Smarter Marketing or for which Simply Smarter Marketing may become liable due to any failure by the Client or its employees, subcontractors or agents to comply with any of its obligations under this Contract or the Data Protection Legislation.
- 15.8 **Governing law and jurisdiction:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation including non-contractual disputes or claims, shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

16. Consequences of cancellation by the Client

- 16.1 The Client may cancel the booking of the Consultancy prior to the Consultancy Commencement Date, subject to giving written notice to Simply Smarter Marketing and upon making payment to Simply Smarter Marketing of the cancellation charges as set out in the table below:

Cancellation Period	Cancellation Charge
60 days or more prior to Consultancy Commencement Date	Nil
30 to 59 days prior to Consultancy Commencement Date	50%
14 to 29 days prior to Consultancy Commencement Date	75%
7 to 13 days prior to Consultancy Commencement Date	85%
Up to 7 days prior to Consultancy Commencement Date	100%

The percentages shown above are of the quoted or estimated Consultancy Fee and the periods relate to the number of days before the agreed Consultancy Commencement Date.

- 16.2 Where a Deposit has been paid by the Client, Simply Smarter Marketing may use some or all of this in full or partial satisfaction of the cancellation charge in accordance with this clause 16.

