

BEARFOOT GRAPHICS LIMITED: TERMS AND CONDITIONS

The Client's attention is particularly drawn to the provisions of condition 11.

1. INTERPRETATION

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

Background IPR: any and all Intellectual Property Rights that are owned by or licensed to Bearfoot Graphics and which are or have been developed independently of the Services and/or Deliverables (whether prior to the date of the Contract or otherwise).

Bearfoot Graphics: Bearfoot Graphics Limited, the limited company with company number 3823212 whose registered office is at Hawthorne, Blacknest, Alton, Hampshire GU34 4PX and which trades as Bearfoot Graphics.

Bearfoot Graphics' Materials: has the meaning set out in condition 4.1(f).

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

Charges: the charges payable by the Client for the supply of the Services and/or Deliverables in accordance with condition 6.

Client Materials: has the meaning set out in condition 4.1(b).

Conditions: these terms and conditions as amended from time to time in accordance with condition 14.8.

Contract: the contract between Bearfoot Graphics and the Client for the supply of Services and/or Deliverables in accordance with these Conditions.

Copyright Material: has the meaning set out in condition 7.1(a).

Client: the company, partnership or sole trader which purchases Services and/or Deliverables from Bearfoot Graphics.

Deliverables: the deliverables to be provided by Bearfoot Graphics for the Client, as described in the Quote.

Due Date: has the meaning set out in condition 6.6.

Inappropriate Content: has the meaning set out in condition 3.5.

Intellectual Property Rights: all copyright and related rights, rights in designs, rights in computer software, database rights, patents, rights to inventions, utility models, 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, 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.

Personal Data: has the meaning set out in the Data Protection Act 1998.

Quote: Bearfoot Graphics' quote, provided to the Client, which specifies, amongst other things, the Services and/or Deliverables to be provided by Bearfoot Graphics.

Services: the services to be supplied by Bearfoot Graphics to the Client as described in the Quote.

- Site:** the website to be designed by Bearfoot Graphics if so specified in the Quote.
- Third Party Equipment:** has the meaning set out in condition 3.7.
- 1.2 **Construction.** In these Conditions, the following rules apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - (b) a reference to a party includes its successors or permitted assigns;
 - (c) 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;
 - (d) 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
 - (e) a reference to **writing** or **written** includes faxes and e-mails.
2. **BASIS OF CONTRACT**
- 2.1 The Quote constitutes an offer by Bearfoot Graphics to the Client to purchase Services and/or Deliverables in accordance with these Conditions.
- 2.2 The Quote shall only be deemed to be accepted when the Client has indicated in writing or otherwise (including by issuing a purchase order) that it has accepted the Quote and Bearfoot Graphics acknowledges in writing that it will commence provision of the Services and/or Deliverables at which point and on which date the Contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Bearfoot Graphics which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Bearfoot Graphics, and any descriptions, images or illustrations contained in Bearfoot Graphics' website, catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services and/or Deliverables described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract 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.
- 2.6 Any quotation given by Bearfoot Graphics (including a Quote) is only valid for a period of 28 days from its date of issue.
- 2.7 Until the Client has accepted the Quote pursuant to condition 2.2, Bearfoot Graphics may but shall not be required to

reserve any time or materials for the Client.

3. SUPPLY OF SERVICES AND/OR DELIVERABLES

General

- 3.1 Bearfoot Graphics shall supply the Services and provide the Deliverables to the Client in accordance with the Quote in all material respects.
- 3.2 Bearfoot Graphics warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.3 Bearfoot Graphics shall use its reasonable endeavours to meet any dates for provision of the Services and/or Deliverables specified in the Quote, but any such dates shall be estimates only and time shall not be of the essence for provision of the Services and/or the Deliverables. Bearfoot Graphics shall not be liable for any costs incurred by the Client as a result of provision of the Services and/or the Deliverables after the time estimated by Bearfoot Graphics in the Quote or otherwise.
- 3.4 Bearfoot Graphics shall have the right to make any changes to the Services and/or Deliverables which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services or Deliverables, and Bearfoot Graphics shall notify the Client of any such changes.
- 3.5 The Client is responsible for ensuring that the Client Materials do not infringe any applicable laws, regulations or third party rights (such as 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**). Bearfoot Graphics shall have the right to refuse to use in any Service and/or Deliverable, any text, image, film or video which it considers to be Inappropriate Content.

- 3.6 The Client will indemnify Bearfoot Graphics against all damages, losses and expenses arising as a result of any action or claim that the Client Materials or any other material posted to, or linked to, the Site constitutes Inappropriate Content.

- 3.7 Any equipment, hardware or other tools or items provided to Bearfoot Graphics by the Client for use in relation to the Services and/or Deliverables (whether belonging to the Client or a third party) (**Third Party Equipment**) shall remain the property of the Client or such third party and shall be at the risk (and under the insurance) of the Client or such third party. Bearfoot Graphics shall not be responsible for any damage, loss, expense or delay incurred or suffered by the Client as a result of the use the Third Party Equipment by Bearfoot Graphics or of any malfunction, damage, loss to or theft of the Third Party Equipment whilst in the possession of Bearfoot Graphics.

Website Design

- 3.8 If a Site is to be designed by Bearfoot Graphics as part of the Services, Bearfoot Graphics will:
- (a) use its reasonable endeavours to ensure that the Site will be compatible with the most popular

internet browser applications but shall not be responsible if the Site is not so compatible or if any third party is therefore unable to access the Site;

- (b) within 14 days of the Site going live, if it does not already do so, carry out any work necessary in order to ensure that the Site substantially complies with the design specification set out in the Quote; and
- (c) not, other than pursuant to condition 3.8(b), be responsible for any website hosting, maintenance or support, development of or changes or amendments to the Site or domain name availability and registration unless otherwise agreed in writing.

Transportation

- 3.9 Where the Services include transport of any Client Materials, Deliverables or any other equipment or tools required for the Services and any such goods or materials are damaged or lost in transit, Bearfoot Graphics shall be responsible only for the cost of replacing any such goods or materials damaged or lost in transit.

Exclusions and Changes

- 3.10 Bearfoot Graphics uses current versions of standard software for the graphic design industry (or versions which are generally regarded as current). Unless otherwise agreed in writing with Bearfoot Graphics, all Deliverables will be provided using such versions of such software. Bearfoot Graphics shall not be responsible if the Client is unable to access the Deliverables

or any other issue arises as a result of a lack of compatibility between the software on which or the format in which Deliverables are provided and the Client's software and systems or the Client not having access to such software or systems as are required to download and/or view the Deliverables.

- 3.11 Bearfoot Graphics shall not provide or be responsible for any matters specified as exclusions in the Quote.
- 3.12 Any request by the Client for a change to the Services and/or Deliverables, shall be the subject of a separate Contract and require a revised Quote.

4. CLIENT'S OBLIGATIONS

- 4.1 The Client acknowledges that Bearfoot Graphics' ability to provide the Services and Deliverables is dependent upon the full and timely co-operation of the Client (which the Client agrees to provide), as well as the accuracy and completeness of the design specification and quality of any information and data the Client provides to Bearfoot Graphics. Accordingly, the Client shall:
 - (a) prior to accepting the Quote, ensure that the terms of the Quote are complete and accurate;
 - (b) provide Bearfoot Graphics with such information and materials as Bearfoot Graphics may reasonably require in order to supply the Services and/or Deliverables (**Client Materials**), and ensure that such information and materials are accurate, complete and of a resolution and quality appropriate for use in the Deliverable to be designed or

otherwise provided by Bearfoot Graphics and provided to Bearfoot Graphics at the times and in the format requested by Bearfoot Graphics or if no specific time is requested, then in a timely manner;

- (c) obtain, maintain and renew at the appropriate time all necessary licences, permissions and consents which may be required for any of the Services and/or Deliverables and do so before the date on which the Services are to start and/or the Deliverables are to be delivered;
- (d) co-operate with Bearfoot Graphics in all matters relating to the Services and Deliverables;
- (e) provide Bearfoot Graphics, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by Bearfoot Graphics in order to supply the Services;
- (f) keep and maintain all materials, equipment, documents and other property of Bearfoot Graphics (**Bearfoot Graphics' Materials**) at the Client's premises or otherwise under the control of the Client, in safe custody at its own risk, maintain Bearfoot Graphics' Materials in good condition until returned to Bearfoot Graphics, and not dispose of or use Bearfoot Graphics' Materials other than in accordance with Bearfoot Graphics' written instructions or authorisation; and
- (g) immediately notify Bearfoot Graphics of any cancellation of

any Services and/or Deliverables (such notice shall be at least three Business Days' prior to the expected date for performance of any Services and/or provision of any Deliverables).

4.2 Bearfoot Graphics cannot provide the Services and/or Deliverables unless the licences referred to in condition 4.1(c) are in place and remain in place. Bearfoot Graphics will not be liable to the Client for any breach of these Conditions as a result of or in connection with any failure by the Client to obtain, maintain and renew such licences.

4.3 If Bearfoot Graphics' 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**):

- (a) Bearfoot Graphics shall, without limiting its other rights or remedies, have the right to suspend performance of the Services or provision of the Deliverables until the Client remedies the Client Default;
- (b) Bearfoot Graphics shall not be liable for the performance of any of its obligations to the extent the Client Default prevents or delays Bearfoot Graphics' performance of any of its obligations;
- (c) Bearfoot Graphics shall not be liable for any damage, loss or expenses sustained or incurred by the Client arising directly or indirectly from Bearfoot Graphics' failure or delay to perform any of its obligations as set out in this condition 4.2; and

- (d) the Client shall reimburse Bearfoot Graphics on written demand for all damages, losses and expenses sustained or incurred by Bearfoot Graphics arising directly or indirectly from the Client Default.

5. APPROVAL PROCESS

- 5.1 Bearfoot Graphics shall provide to the Client a final proof of each Deliverable, for approval.
- 5.2 The Client shall be solely responsible for checking and approving each Deliverable, including in relation to the design, layout, grammar, spelling, punctuation, images and overall look and feel.
- 5.3 If the Deliverable is approved by the Client, the Client shall promptly notify Bearfoot Graphics of such approval in writing. In addition, approval of the Deliverable shall be deemed to have taken place upon the occurrence of any of the following events:
 - (a) the Client uses any part of the Deliverable for any revenue-earning purposes or to provide any services to third parties other than for the approval process; or
 - (b) the Client unreasonably delays review of the Deliverable for the purposes of approving it.
- 5.4 In certain circumstances, for example, where a number of changes are made prior to a Deliverable being approved by the Client or instructions are changed after work has started, Bearfoot Graphics may need to apply additional Charge (for example, for the additional time taken). If

this happens Bearfoot Graphics will discuss the circumstances with the Client and agree the additional Charges which will apply, before carrying out any further work.

- 5.5 Bearfoot Graphics shall not and shall not be required to submit any Deliverable to print or to make available or otherwise release any Deliverable into the public domain, which has not been approved by the Client (and in respect of which Bearfoot Graphics has not received written notification pursuant to condition 5.2).
- 5.6 Once the Client has notified Bearfoot Graphics that the Deliverable has been approved, any further amendments, variations or modifications requested by the Client shall be subject to condition 3.12 and therefore at the Client's cost.

6. CHARGES AND PAYMENT

- 6.1 The Charges for the Services and/or Deliverables shall be on a time and materials basis:
 - (a) the Charges shall be calculated in accordance with Bearfoot Graphics' daily fee rates, as set out in the Quote or such other basis as is set out in the Quote;
 - (b) Bearfoot Graphics' daily fee rates for each individual are calculated on the basis of: an hour; a half day (4 hours), a day (eight hours) or, when worked at a Client's premises or other location at the request of the Client, a "site day" (ten hours) worked on Business Days;
 - (c) Bearfoot Graphics shall be entitled to charge overtime (on an

- hourly basis, pro rata the fees referred to in the Quote and rounded up to the nearest hour) for any time worked by it or individuals whom it engages on the Services and/or provision of the Deliverables outside the hours referred to in condition 6.1(b);
- (d) Bearfoot Graphics shall be entitled to charge the Client for any expenses reasonably incurred by it or the individuals whom Bearfoot Graphics engages in connection with the Services and/or Deliverables including the cost of materials, legal costs, travelling expenses, hotel costs, subsistence and any associated expenses, and the cost of services provided by third parties and required by Bearfoot Graphics for the performance of the Services and/or provision of the Deliverables; and
- (e) unless otherwise agreed, the Charges shall be payable in GBP only.
- 6.2 Bearfoot Graphics reserves the right to increase its daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. Bearfoot Graphics will give the Client written notice of any such increase two months before the proposed date of the increase. If such increase is not acceptable to the Client, it shall notify Bearfoot Graphics in writing within four weeks of the date of Bearfoot Graphics' notice and Bearfoot Graphics shall have the right without limiting its other rights or remedies to terminate the Contract by giving four weeks' written notice to the Client.
- 6.3 Bearfoot Graphics shall invoice the Client at the time or times specified in the Quote, and if no time is specified, then on completion of the Services and/or Deliverables, or, if the Services and/or Deliverables are to be provided for more than a month, monthly in arrears.
- 6.4 The Client shall pay each invoice submitted by Bearfoot Graphics:
- (a) unless otherwise stated on the Quote, within 30 days of the date of the invoice; and
- (b) in full and in cleared funds by BACS to a bank account nominated in writing by Bearfoot Graphics, by cheque, cash or (for non UK Clients only) via Paypal or an alternative online payment service, and
- time for payment shall be of the essence of the Contract.
- 6.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by Bearfoot Graphics to the Client, the Client shall, on receipt of a valid VAT invoice from Bearfoot Graphics, pay to Bearfoot Graphics such additional amounts in respect of VAT as are chargeable on the supply of the Services and/or Deliverables at the same time as payment is due for the supply of the Services and/or Deliverables.
- 6.6 Without limiting any other right or remedy of Bearfoot Graphics, if the Client fails to make any payment due to Bearfoot Graphics under the Contract by the due date for payment (**Due Date**), Bearfoot Graphics 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 Bank plc'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.

6.7 The Client shall, within 14 days of receipt of an invoice, notify Bearfoot Graphics of any dispute in relation to such invoice.

6.8 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 Bearfoot Graphics in order to justify withholding payment of any such amount in whole or in part. Bearfoot Graphics may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Bearfoot Graphics to the Client.

6.9 If any Services and/or Deliverables are cancelled by giving notice of three or more than three Business Days, the Client shall be liable to pay Bearfoot Graphics for the time taken by Bearfoot Graphics in respect of any Services and/or Deliverables provided prior to the date of cancellation. If any Services and/or Deliverables are cancelled by giving notice of less than three Business Days, the Client shall be liable to pay Bearfoot Graphics for the time taken by Bearfoot Graphics in respect of any Services and/or Deliverables provided prior to the date of cancellation and for any half days, days or site days (as described in condition 6.1(b)) booked or otherwise reserved with Bearfoot Graphics after the date of cancellation.

7. INTELLECTUAL PROPERTY RIGHTS

Ownership

7.1 Subject to condition 7.6, the Client shall not acquire any right, title or interest in or to the Intellectual Property Rights of Bearfoot Graphics or its licensors, including:

- (a) the Intellectual Property Rights in or relating to the Services and/or the Deliverables (the **Copyright Material**); or
- (b) the Background IPR.

7.2 All Bearfoot Graphics' Materials are the exclusive property of Bearfoot Graphics.

7.3 Subject to conditions 7.9 and 7.10, Bearfoot Graphics shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Client or its licensors.

7.4 If requested to do so by Bearfoot Graphics, the Client shall, at its own expense, mark all Bearfoot Graphics' Materials, Copyright Materials and Deliverables or parts thereof with the appropriate notice, legend or marks in the manner directed by Bearfoot Graphics.

7.5 Pursuant to these Conditions, Bearfoot Graphics shall be entitled to use any of the Client's names, logos or trade marks on any of its products or services contained in any of the Deliverables or Services for promotion and marketing purposes.

Licences

7.6 Subject to payment of the Charges in full, Bearfoot Graphics hereby grants to the

Client, or shall procure the grant to the Client of, a perpetual, worldwide, non-exclusive, non-transferable licence to use the Copyright Material and such of the Background IPR as are contained in the Services and/or the Deliverables, for the purposes described in the Quote.

7.7 The licence granted in condition 7.6 is granted solely to the extent necessary for the Client to use the Services and/or the Deliverables in accordance with the Contract. The Client shall not use such licensed materials for any other purpose without the prior written consent of Bearfoot Graphics.

7.8 The Client shall not, whether alone or in association with any other person, vary, reverse engineer, disassemble, create derivative works, modify, adapt the Services, Deliverables or any of Bearfoot Graphics' Intellectual Property Rights, without express prior written consent from Bearfoot Graphics.

7.9 The Client hereby grants to Bearfoot Graphics, or shall procure the grant to Bearfoot Graphics of, a perpetual, worldwide, non-exclusive, non-transferable licence to use such of the Intellectual Property Rights of the Client or its licensors as are required in order for Bearfoot Graphics to provide the Services and/or the Deliverables and to use the Deliverables for its own marketing purposes (including on its website).

Joint Working

7.10 To the extent that any Intellectual Property Rights arise as a result of joint working or collaboration between Bearfoot Graphics and the Client, the Client hereby assigns to

Bearfoot Graphics all existing and future Intellectual Property Rights arising as a result of such joint working (the **Joint IPR**). Insofar as the Intellectual Property Rights in the Joint IPR do not vest automatically in Bearfoot Graphics by operation of law or under the Contract, the Client holds legal title in such Joint IPR on trust for Bearfoot Graphics. Subject to payment of the Charges in full, Bearfoot Graphics hereby grants to the Client or shall procure the grant to the Client of, a perpetual, worldwide, non-exclusive, non-transferable licence to use the Joint IPR for the purposes described in the Quote.

Third Party Rights

7.11 The Client acknowledges that, in respect of any Intellectual Property Rights belonging to a third party (meaning any person other than Bearfoot Graphics), the Client's use of any such Intellectual Property Rights is conditional on Bearfoot Graphics obtaining a written licence from the relevant licensor on such terms (including as to cost) as will entitle Bearfoot Graphics to license such rights to the Client pursuant to the Quote.

Termination of the Licence

7.12 In the event of the termination or expiry of the Contract or the non-payment by the Client of any sum when due to Bearfoot Graphics, the licences granted in conditions 7.6 and 7.10 shall terminate automatically and the Client shall comply with the provisions of condition 13.2.

Infringement

7.13 The Client is responsible for ensuring that it has the right to grant Bearfoot Graphics

the licence under condition 7.9 and, in respect of licences to be procured by the Client, if it is unable to obtain any such licences from a third party, it shall notify Bearfoot Graphics immediately upon becoming aware of such and in any event prior to Bearfoot Graphics utilising the materials to which such licence would relate.

7.14 If any Client Materials infringe or are suspected of infringing any third party's Intellectual Property Rights, Bearfoot Graphics may modify or remove any affected Service and/or Deliverable so as to avoid the infringement or replace any part of any affected Service and/or Deliverable with a non-infringing material.

7.15 The Client shall indemnify Bearfoot Graphics from and against all claims, demands, actions, losses, expenses, liabilities and damages and costs (including all interest, penalties and legal and other professional costs and expenses) incurred by Bearfoot Graphics, its directors, employees, agents and sub-contractors arising out of or in connection with any failure by the Client to obtain, maintain and renew the licences referred to in condition 4.1(c) or any claim, demand or action that any Client Materials have infringed any Intellectual Property Rights of a third party; contain Inappropriate Content; have caused a breach of privacy or breach of confidence; or have caused a breach of any law.

8. QUALITY OF AND ACCESS TO DELIVERABLES AND MATERIALS

8.1 Bearfoot Graphics shall have no responsibility for the quality or accuracy of the Client Materials. Any costs arising in relation to amendments, corrections,

modifications to any Client Materials shall be borne by the Client, and unless otherwise specified in the Quote, such costs shall be in addition to the Charges payable pursuant to condition 6.

8.2 Once the Deliverables have been provided to the Client, Bearfoot Graphics shall not be responsible for any disaster recovery or business continuity in relation to the Deliverables (including taking copies of and backing up any Deliverables).

8.3 If following provision of any Deliverables to the Client, such Deliverables become corrupted or otherwise the Client loses or is unable to access such Deliverables, subject to payment of a reasonable fee (which shall be determined by reference to Bearfoot Graphics' daily rate), and provided that Bearfoot Graphics has retained a copy, it shall retrieve and provide a copy of such Deliverables to the Client.

8.4 If the Deliverables are provided to the Client in a downloadable format, the download will be available for 30 days. If the Client requests a subsequent or extended period in which to download the Deliverables, Bearfoot Graphics shall be entitled to charge a reasonable fee (which shall be determined by reference to Bearfoot Graphics' daily rate) for making the Deliverables available for download in any additional or subsequent period.

9. CONFIDENTIALITY

9.1 A party (**Receiving Party**) 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 the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This condition 9 shall survive termination of the Contract.

10. DATA PROTECTION

10.1 Bearfoot Graphics agrees that, to the extent it processes any Personal Data on behalf of the Client:

- (a) it shall act only on instructions from the Client;
- (b) it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data; and
- (c) it shall retain such Personal Data only for the period of time specified in the Quote or otherwise notified to it by the Client.

10.2 The Client shall be responsible for ensuring that all Personal Data provided to Bearfoot Graphics in order for it to provide

the Services complies with and at all times during this Contract remains compliant with the data protection principles set out in Schedule 1 to the Data Protection Act 1998.

11. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

11.1 Nothing in these Conditions shall limit or exclude Bearfoot Graphics' liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

11.2 Subject to condition 11.1:

- (a) Bearfoot Graphics shall under no circumstances whatsoever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any damage to software, damage to or loss of data, loss of profit, loss of business opportunity, loss of anticipated savings, goodwill, anticipated profits or revenues, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Bearfoot Graphics' total liability to the Client in respect of all other losses arising from its own wilful acts or omissions under or

in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges paid to Bearfoot Graphics by the Client for the Services and/or Deliverables provided pursuant to the Contract as at the date the liability first arose.

11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This condition 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:

- (a) the other party commits a material breach of 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;
- (b) 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;

- (c) 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;
- (d) 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);
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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;
- (g) 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);
- (h) 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;
- (i) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (j) 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, Bearfoot Graphics may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the Due Date.
- 12.3 Without limiting its other rights or remedies, if the Client becomes subject to any of the events listed in condition 12.1(b) to condition 12.1(j), or Bearfoot Graphics 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 the Contract within 30 days of the Due Date, Bearfoot Graphics shall be entitled to i) require the Client to immediately pay to Bearfoot Graphics all of Bearfoot Graphics' outstanding unpaid invoices and interest; ii) in respect of Services and/or Deliverables supplied but for which no invoice has been submitted, submit an invoice, which shall be payable by the Client immediately on receipt; and iii) suspend provision of the Services and/or Deliverables under the Contract or any other contract between the Client and Bearfoot Graphics.
- 12.4 Each party shall be entitled to terminate the Contract at any time by giving to the other one month's notice in writing.
- 13. CONSEQUENCES OF TERMINATION AND NON-PAYMENT**
- 13.1 On termination of the Contract for any reason:
- (a) the Client shall immediately pay to Bearfoot Graphics all of Bearfoot Graphics' outstanding unpaid invoices and interest and, in respect of Services and/or Deliverables supplied but for which no invoice has been submitted, Bearfoot Graphics shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) 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
- (c) conditions which expressly or by implication have effect after termination shall continue in full force and effect.
- 13.2 On termination of the Contract for any reason or on non-payment of any invoice, in addition to Bearfoot Graphics' other rights and remedies in respect of the termination and/or non-payment, the Client shall remove and/or return all of Bearfoot Graphics' Materials and any Deliverables which have not been paid for in full from the Site, all the Client's computers, hard drives and servers. If the

Client fails to do so, then Bearfoot Graphics may enter the Client's premises (and any other relevant premises) and remove and/or take possession of them. Until they have been removed and/or returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14. GENERAL

14.1 Force majeure:

- (a) For the purposes of the Contract, **Force Majeure Event** means an event beyond the reasonable control of Bearfoot Graphics including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Bearfoot Graphics 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, epidemic, pandemic or default of suppliers or subcontractors, failure, loss or theft of equipment or bug, virus, worm, software bomb or similar item introduced by a third party into Bearfoot Graphics' systems, the Deliverables or the Client's systems.
- (b) Bearfoot Graphics shall not be liable to the Client as a result of any delay or failure to perform its obligations under the Contract or for any damage, loss or expenses

incurred or suffered by the Client as a result of a Force Majeure Event.

- (c) If the Force Majeure Event prevents Bearfoot Graphics from providing any of the Services and/or Deliverables for more than 24 hours, Bearfoot Graphics shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client.

14.2 Assignment and subcontracting:

- (a) Bearfoot Graphics 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. If Bearfoot Graphics subcontracts its obligations under the Contract, the third party or agent to whom the obligations have been subcontracted (and not Bearfoot Graphics) will be responsible to the Client for compliance with such obligations.
- (b) The Client shall not, without the prior written consent of Bearfoot Graphics, 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:

(a) Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, to its registered office (if a company) or (in any other case) its principal place of business, or sent by fax or email to the other party's fax number or email address.

(b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, if sent by fax, on the next Business Day after transmission or if sent by email, within 4 hours of transmission.

(c) This condition 14.3 shall not apply to the service of any proceedings or other documents in any legal action.

14.4 Waiver:

(a) 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.

(b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.5 Severance:

(a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) 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.

(b) 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 Bearfoot Graphics.
- 14.9 **Governing law and jurisdiction:** The 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.