

THE CLIENT'S ATTENTION IS DRAWN TO CLAUSE 8 OF THESE TERMS

1. DEFINITIONS

1.1 In these terms the following meanings are attributed: -

“**BBJ&K**” BBJ&K Limited (Company Number: 10418977).

“**Client**” the person entering into the Contract with BBJ&K.

“**Confidential Information**” in relation to either party, any information (whether or not stated to be confidential or marked as such) which that party discloses to the other, or which the other party obtains from any information disclosed to it by that party, either orally or in writing or by any other means, under or in connection with the Engagement or the Services.

“**Contract**” the contract between BBJ&K and the Client for the provision of Services as set out in Order.

“**Force Majeure**” any circumstances beyond the reasonable control of a party (including but not limited to strike lockout or other industrial action).

“**Intellectual Property**” means any property in which IP Rights may from time to time subsist.

“**IP Rights**” means any and all patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in the United Kingdom and any other part of the world.

“**Normal Working Hours**” means 0900hrs to 1730hrs on a Working Day.

“**Order**” BBJ&K's insertion order form supplied to the Client specifying the Services.

“**Services**” the Services to be supplied by BBJ&K as specified in the Order.

“**Supplier Terms**” the terms, conditions, contractual duties and obligations imposed on BBJ&K in contracts made between BBJ&K and their suppliers.

“**Terms**” these terms and conditions.

“**Working Day**” a day other than Saturday or Sunday or a UK Public Holiday. “**Writing**” and any similar expression includes emails but not SMS text messages.

2. PRELIMINARIES

2.1 These Terms set out the terms upon which BBJ&K will supply Services to the Client. Every supply of Services by BBJ&K to the Client shall be on these terms except as specifically varied in the Order.

2.2 Subject to clause 4.3 these Terms shall govern the Contract to the exclusion of any other terms and conditions and override any other terms which the Client may subsequently seek to impose.

2.3 Subject to clause 4.3 these Terms shall prevail over any inconsistent terms implied by trade custom, practice or course of dealing and any such inconsistent terms are hereby excluded.

2.4 No variation to these Terms or any Contract shall be binding upon BBJ&K unless agreed by it and such agreement is recorded in a document signed by not less than two of the directors of BBJ&K.

2.5 Any forbearance or indulgence on the part of BBJ&K, its servants or agents to enforce fully or at all any of the Terms shall not constitute a waiver of BBJ&K's rights and shall be entirely without prejudice to those rights.

3. BASIS OF CONTRACT

3.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Terms.

3.2 The Order shall only be deemed to be accepted by BBJ&K when BBJ&K issues written acceptance of the Order at which point (and on which date) the Contract shall come into existence (**Commencement Date**).

3.3 Any samples, drawings, descriptive matter or advertising proofs issued by BBJ&K, and any descriptions or illustrations contained in BBJ&K's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of these Terms or have any contractual force.

3.4 Any quotation, proposal, order or media plan is an invitation to treat only and shall not be capable of acceptance. No contract shall come into existence except as specified in clause 3.2 above.

3.5 BBJ&K shall use its reasonable endeavours to meet any performance dates set out in the Order, but such dates are estimates only and time shall not be of the essence for the performance of the Services by BBJ&K.

4. PROVISION OF SERVICES

4.1 BBJ&K shall supply and the Client shall buy the Services for the price detailed in the Order upon these Terms and any additional terms specified in the Order.

4.2 BBJ&K shall provide the Services using reasonable care and skill. Notwithstanding this, the Client acknowledges that BBJ&K guarantee no outcomes following the provision of the Services.

4.3 BBJ&K reserves the right to amend the Order if necessary to comply with any applicable law or regulatory requirement, Supplier Terms, or if the amendment will not materially affect the nature or quality of the Services, and BBJ&K shall use its reasonable endeavours to notify the Client in any such event.

4.4 BBJ&K shall be entitled to refuse to publish any advertisement or materials provided by the Client where BBJ&K, at its sole discretion, considers that such advertisement or materials include material which may reasonably be considered to be defamatory, abusive, obscene, threatening or otherwise offensive to any person.

4.5 The Client irrevocably appoints BBJ&K to be its attorney or agent in its name and on his behalf to do all such acts and things and to sign all such agreements, deeds and documents as may be necessary in order for BBJ&K to provide the Services.

5. CLIENT'S OBLIGATIONS

5.1 The Client shall:

- (a) pay all monies due hereunder on their due date;
- (b) on demand comply with BBJ&K's request for payments on account to cover out of pocket expenses and this party fees.
- (c) ensure that the terms of the Order are complete and accurate;
- (d) supply a clear brief to BBJ&K including desired outcomes (though for the avoidance of doubt no outcome is guaranteed);
- (e) co-operate and provide BBJ&K with such information and materials as BBJ&K may reasonably require in order to supply the Services (including unrestricted access to any internally managed advertising platforms) and ensure that such information is complete and accurate in all material respects;
- (f) ensure that all persons from whom cooperation is required in connection with the Services do cooperate fully and promptly with BBJ&K and are duly authorized to give BBJ&K instructions;
- (g) be bound by BBJ&K's own assumptions in cases where BBJ&K has had to proceed without the Client having complied with its obligations under this clause;
- (h) obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (i) comply with all applicable laws. Including health and safety laws; and
- (j) comply with all additional obligations set out in the Order.

5.2 The Client hereby warrants that all information and documents supplied by it to BBJ&K contain nothing which is obscene, blasphemous, libelous or deemed unlawful and the publication thereof will not infringe the IP Rights of any third party or breach any law bye-law or regulation.

5.3 The Client will keep BBJ&K fully indemnified against all losses, actions, claims, demands, proceedings, costs and damages arising out of or in any way connected with any breach by the Client of its obligations contained within these Terms or any loss injury or damage for which BBJ&K is not liable hereunder.

5.4 If BBJ&K'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**):

(a) without limiting or affecting any other right or remedy available to it, BBJ&K shall have the right to suspend performance of the Services 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 in each case to the extent the Client Default prevents or delays BBJ&K's performance of any of its obligations;

(b) BBJ&K shall not be liable for any costs or losses sustained or incurred by the client arising directly or indirectly from BBJ&K's failure or delay to perform any of its obligations as set out in this clause 5.4; and

(c) the Client shall reimburse BBJ&K on written demand for any costs or losses sustained or incurred by BBJ&K arising directly or indirectly from the Client Default.

5.5 The Client undertakes that, other than with the prior written permission of BBJ&K, it shall not directly or indirectly:

(a) Perform or pursue or instruct, solicit, procure or otherwise encourage any third party to perform or pursue any of the Services specified in the Order or any Substituted Services; or

(b) Seek or encourage or respond to any approach from any third party to pursue any of the Services set out in an Order or any Substituted Services.

5.6 For the purposes of clause 5.5 the term "Substituted Services" shall mean any services which are the same or substantially similar to the Services set out in the Order.

5.7 In the event of a breach by the Client of either of the undertakings given in clause 5.5 the Client shall pay to BBJ&K as liquidated damages 100% of the amount of the charges set out in the Order which is subject to the breach.

6. CHARGES

6.1 The charges for the Services shall be as stated in the Order and shall be exclusive of VAT which shall be paid in addition. Where no price is stated in the Order, the charges for the Services shall be calculated on a time and materials basis in accordance with BBJ&K's rates applicable from time to time (and available on request). The charges will, where applicable, include the purchase of agreed media exposure and may include technical, tracking and other fees. BBJ&K reserves the right to earn commission on any contracts entered into with third parties and to charge a mark up any media costs arising from or incidental to the provision of the Services.

6.2 BBJ&K shall be entitled to charge the Client for any expenses incurred by the persons whom BBJ&K engage in connection with the Services including travel expenses, hotel costs, subsistence and associated expenses and for the cost of services provided by third parties and requested by BBJ&K for the performance of the Services and for the cost of any materials necessary.

6.3 BBJ&K reserves the right to increase the price to take account of:

- (a) variations or extensions to the Services or the time when they are to be provided;
- (b) work to be carried out other than during Normal Working Hours;
- (c) any factor beyond the control of BBJ&K (including foreign exchange fluctuations and increases in taxes and duties); and
- (d) any delay caused by breach by the Client of its obligations hereunder.

6.4 For avoidance of doubt BBJ&K shall not be obliged to agree to any request to vary or extend the Services.

7. TERMS OF PAYMENT

7.1 BBJ&K shall invoice the Client on completion of the Services or where the Services are to be provided over an extended period, on a monthly basis.

7.2 The Client shall pay each invoice submitted by BBJ&K:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by BBJ&K and confirmed in the Order; and
- (b) in full and in cleared funds to a bank account nominated in writing by BBJ&K and time for payment shall be of the essence.

7.3 All amounts payable by the Client under each Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the BBJ&K to the Client, the Client shall, on receipt of a valid VAT invoice from BBJ&K, pay to BBJ&K such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

7.4 If the Client fails to make a payment due to BBJ&K under the Contract by the due date, then, without limiting BBJ&K's remedies under clause 10 the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.4 will accrue each day at the greater of 5% a year above the Bank of England's base rate from time to time and 8% per annum, from the due date until the date cleared funds are received (whether before or after judgment).

7.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7.6 BBJ&K shall have a general lien on all work done, materials coming into existence by virtue of the provision of the Services and any other property belonging to the Client, for all monies payable by the Client to BBJ&K, whether payable immediately or at some time in the future.

8. LIMITS ON LIABILITY

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

8.1 Nothing in these Terms limits any liability which cannot legally be limited, including liability for:

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

8.2 Subject to clause 8.1, BBJ&K's total liability to the Client in respect of all breaches of duty occurring within any contract year shall not exceed the cap.

8.3 In clause 8.2:

- (a) **cap.** 100% of the total charges in the contract year in which the breaches occurred;
- (b) **contract year.** A contract year means a 12-month period commencing with the date of the Contract or any anniversary of it;
- (c) **total charges.** The total charges means all sums paid by the Client and all sums payable under the Contract in respect of goods and services actually supplied by BBJ&K, whether or not invoiced to the Client; and
- (d) **total liability.** BBJ&K's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

8.4 This clause 8.4 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to clause 8.1, the types of loss listed in clause 8.4(b) are wholly excluded by the parties.
- (b) The following types of loss are wholly excluded:
 - (i) Loss of profits
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.
 - (v) Loss of use or corruption of software, data or information.
 - (vi) Loss of or damage to goodwill.
 - (vii) Indirect or consequential loss.

8.5 Unless the Client notifies BBJ&K that it intends to make a claim in respect of an event within the notice period, BBJ&K shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in

reasonable detail including, where reasonably practicable, an estimate and the nature of losses suffered.

8.6 This clause 8 shall survive termination of the Contract.

9. INTELLECTUAL PROPERTY

9.1 All IP Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by BBJ&K.

9.2 BBJ&K grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use the IP Rights for the purpose of receiving and using the Services in its business. The said licence will terminate at the end of the term of the Contract.

9.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause **9.2** without the prior written consent of BBJ&K.

9.4 The Client grants BBJ&K a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to BBJ&K for the purpose of providing the Services to the Client.

10. TERMINATION

10.1 Without prejudice to BBJ&K's rights under clause 7 either party shall be entitled to terminate the Contract by giving notice to the other at any time if:

(a) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(b) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;

(c) the other party ceases or threatens to cease to carry on business or suspends payment of its debts.

10.2 Without affecting any other right or remedy available to it, BBJ&K may suspend the supply of Services under the Contract or any other contract between the Client and BBJ&K if:

(a) the Client fails to pay any amount due under the Contract on the due date for payment; and

(b) the Client becomes subject to any of the events listed in clause 10.1(a) to clause 10.1(c); or

(c) BBJ&K reasonably believes that the Client is about to become subject to any of them.

10.3 Without affecting any other right or remedy available to it, BBJ&K 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 for payment.

10.4 Termination of the Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Contract as at the date of termination and, in particular but without limitation, the right to recover damages against the other and all provisions which are expressed to survive the Contract shall remain in force and effect.

10.5 The provisions of clause 10 shall continue in force in accordance with its terms, notwithstanding termination of the Contract for any reason.

11. CONSEQUENCES OF TERMINATION

11.1 On termination or expiry (Termination) of the Contract the Client shall immediately pay to BBJ&K all of BBJ&K's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, BBJ&K shall submit an invoice, which shall be payable by the Client immediately on receipt:

11.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of Termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of Termination.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after Termination of the Contract shall remain in full force and effect

12. CONFIDENTIALITY

12.1 Neither party shall, either during the period of the Contract or at any subsequent time, disclose to any other person any confidential information disclosed to it by the other party under, or in connection with the Contract or the negotiations leading to it, and shall use its best endeavours to keep such information confidential except as provided by clause 12.2 or 12.3. For the avoidance of doubt the Client shall have no right of access to and no right to be supplied with details of BBJ&K's agency advertising accounts.

12.2 Any of the confidential information referred to in clause 12.1 may be disclosed to:

(a) any contractor of or supplier to the party in question of any goods or Services;

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority;

(c) any directors or employees of the party in question; to such extent only as is necessary for the purposes of the Contract or as required by law, and subject in each case (other than under clause 12.2(b)) to the party in question first obtaining (and submitting to the other a copy of) a Written undertaking from the person to whom the disclosure is made, as nearly as practicable in the terms of this clause, to keep it confidential and to use it only for the purposes for which the disclosure is made.

12.3 Any of the confidential information referred to in clause 12.1 may be used by the party in question for any purpose, or disclosed by that party to any other person, to the extent only that any part of it is at the date of the Contract or subsequently becomes public knowledge through no fault of the party in question, provided that in so doing that party does not disclose any part of the Confidential Information which is not public knowledge.

12.4 The Client acknowledges that BBJ&K may undertake work for the Client's competitors and consents thereto relying upon BBJ&K's confidentiality obligations under this clause 12.

13. DELEGATION

13.1 The Services shall be performed by the employees and/or subcontractors of BBJ&K as it shall in its sole discretion decide.

13.2 BBJ&K may at any time assign, subcontract, delegate, or deal in any other manner with any or all of its rights and obligations under the Contract.

13.3 The Client shall not assign, transfer, or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of BBJ&K.

14. FORCE MAJEURE

14.1 If any Force Majeure occurs in relation to either party which affects or may affect the performance of any of its obligations under the Contract (other than, in the case of the Client, its obligation to pay), it shall forthwith notify the other party as to the nature and extent of the circumstances in question.

14.2 A party affected by Force Majeure of which it has notified the other party pursuant to clause 14.1 shall not be deemed to be in breach of the Contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under the Contract, to the extent that the delay or non-performance is due to Force Majeure, and the time for performance of that obligation shall be extended accordingly.

14.3 If the performance by either party of any of its obligations under the Contract is prevented or delayed by Force Majeure for a continuous period in excess of 3 months, the parties shall negotiate in good faith and use their best endeavours to agree upon such amendments to the Contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of 21 days, the other party shall be entitled to terminate this Agreement by giving written notice to the party affected by Force Majeure.

15. GENERAL

15.1 The headings in these Terms are included for ease of reference only and shall not affect its construction.

15.2 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provisions in question shall not be affected thereby.

15.3 In these Terms 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.

16. VARIATION

Except as set out in these Terms, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. WAIVER

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18. SEVERANCE

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

19. NOTICES

19.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office. Service of any notice by fax or email is not permitted.

19.2 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting, or at the time recorded by the delivery service.

19.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

20. THIRD PARTY RIGHTS

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

21. ENTIRE AGREEMENT

21.1 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.

21.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

22. GOVERNING LAW

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

23. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.