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# TERMS & CONDITIONS

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**Bunch Creative**

**1st August 2020**



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## Bunch Creative Terms & Conditions

Please read these Terms and Conditions carefully. All contracts that Bunch Creative may enter into from time to time for the provision of Bunch Creative's services shall be governed by these Terms and Conditions, and Bunch Creative will ask the Client for the Client's express written acceptance of these Terms and Conditions before providing any such services to the Client.

### 1. Definitions

1.1 Except to the extent expressly provided otherwise, in these Terms and Conditions:

**"Acceptance Criteria"** means compliance with the warranties set out in Clause 4.4;

**"Assigned Deliverables"** means those Deliverables (excluding the Third-Party Materials and the Client Materials) the rights in which are to be assigned (rather than licensed) by the Designer to the Client under Clause 7, as specified in Section 4 of the Statement of Work;

**"Business Day"** means any weekday other than a bank or public holiday in England;

**"Business Hours"** means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

**"Charges"** means the following amounts:

- (a) the amounts specified in Section 7 of the Statement of Work;
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying the Designer's standard time-based charging rates (as notified by the Designer to the Client before the date of the Contract) by the time spent by the Designer's personnel performing the Services (rounded down by the Designer to the nearest quarter hour);

**"Client"** means the person or entity identified as such in Section 1 of the Statement of Work;

**"Client Confidential Information"** means:

- (a) any information disclosed by or on behalf of the Client to the Designer at any time before the termination of the Contract (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
  - (i) was marked or described as "confidential"; or
  - (ii) should have been reasonably understood by the Designer to be confidential;
- (b) the terms of the Contract; and



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(c) the Deliverables;

"**Client Materials**" means all works and materials supplied by or on behalf of the Client to the Designer for incorporation into the Deliverables or for some other use in connection with the Services;

"**Contract**" means a particular contract made under these Terms and Conditions between the Designer and the Client;

"**Deliverables**" means those [*deliverables*] specified in Section 4 of the Statement of Work that the Designer has agreed to deliver to the Client under these Terms and Conditions;

"**Designer**" means Zemo Ltd, trading as Bunch Creative of 4 Abbots Way, Abbotswood, Ballasalla, Isle of Man IM9 3EQ, a company limited by shares incorporated in the Isle of Man (registration number **130260C**);

"**Effective Date**" means the date of execution of a Statement of Work incorporating these Terms and Conditions;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Licensed Deliverables**" means the Deliverables excluding the Assigned Deliverables, the Third-Party Materials, and the Client Materials;

"**Minimum Term**" means, in respect of the Contract, [the period of 12 months beginning on the Effective Date] OR [the period specified in Section 2 of the Statement of Work];

"**Permitted Purpose**" means the completion of the services and deliverables specified in Section 3 and 4 of the Statement of Work;

"**Services**" means the public relations and press services specified in Section 3 of the Statement of Work;



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"**Statement of Work**" means a written statement of work agreed by or on behalf of each of the parties;

"**Term**" means the term of the Contract, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"**Terms and Conditions**" means all the documentation containing the provisions of the Contract, namely the main body of these Terms and Conditions and the Statement of Work, including any amendments to that documentation from time to time; and

"**Third Party Materials**" means the works and/or materials comprised in the Deliverables (excluding the Client Materials), the Intellectual Property Rights in which are owned by a third party, and which are specified in Section 4 of the Statement of Work or which the parties agree in writing shall be incorporated into the Deliverables.

## **2. Term**

- 2.1 The Contract shall come into force upon the Effective Date.
- 2.2 The Contract shall continue in force for a period of three month from the Effective Date, subject to termination in accordance with Clause 16.
- 2.3 Unless the parties expressly agree otherwise in writing, each Statement of Work shall create a distinct contract under these Terms and Conditions.

## **3. Services**

- 3.1 The Designer shall provide the Services to the Client in accordance with these Terms and Conditions.
- 3.2 The Designer shall provide the Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Designer's industry.
- 3.3 The Designer shall devote such of its personnel's time and expertise to the performance of the Services as may be necessary for their satisfactory and timely completion.
- 3.4 The Designer shall keep the Client informed about the progress of the Services and, in particular, shall promptly provide information about such progress following receipt of a written request from the Client to do so.
- 3.5 The Designer shall comply with all reasonable requests and directions of the Client in relation to the Services.

## **4. Deliverables**

- 4.1 The Designer shall deliver the Deliverables to the Client.



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- 4.2 The Client must promptly, following receipt of a written request from the Designer to do so, provide written feedback to the Designer concerning the Designer's proposals, plans, designs and/or preparatory materials relating to the Deliverables and made available to the Client with that written request.
- 4.3 The Designer shall use reasonable endeavours to ensure that the Deliverables are delivered to the Client in accordance with the timetable set out in Section 5 of the Statement of Work.
- 4.4 The Designer warrants to the Client that:
- (a) the Deliverables will conform with the requirements of Section 4 of the Statement of Work as at the date of acceptance of the Deliverables;
  - (b) the Deliverables will be free from material defects; and
  - (c) the Deliverables when used by the Client in accordance with these Terms and Conditions will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 5. Acceptance**
- 5.1 Within 10 Business Days following the delivery of Deliverables to the Client, the Client shall:
- (a) review the Deliverables to determine whether they comply with the Acceptance Criteria; and
  - (b) notify the Designer in writing of the results of such review, providing full details of any non-compliance with the Acceptance Criteria.
- 5.2 If the Client does not give to the Designer a notice under Clause 5.1, within the period referred to in Clause 5.1, then the Deliverables shall be deemed to meet the Acceptance Criteria and payment will be expected as a result. The Designer will not publish or distribute any material without the Client's explicit permission to do so beforehand.
- 5.3 If the Deliverables do not comply with the Acceptance Criteria and the Client notifies the Designer of the non-compliance in accordance with this Clause 5, the Designer will have a further reasonable period agreed by the parties (of no less than 5 Business Days and no more than 20 Business Days) to remedy the non-compliance, following which Client will repeat the review.
- 5.4 If the Deliverables do not meet the Acceptance Criteria at the time of a second (or subsequent) acceptance review under this Clause 5, then Designer shall be deemed in irremediable material breach of the Contract.



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- 5.5 If the Client accepts or is deemed to accept the Deliverables under this Clause 5, then subject to Clause 14.1 the Client will have no right to make any claim under or otherwise rely upon Clause 4.4 unless the Client could not reasonably have been expected to have identified the breach of that provision during the testing or review process.

## **6. Client Materials**

- 6.1 The Client must supply to the Designer the Client Materials specified in Section 6 of the Statement of Work, in accordance with the timetable specified in Section 5 of the Statement of Work.
- 6.2 The Client hereby grants to the Designer a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Client Materials to the extent reasonably required for the performance of the Designer's obligations and the exercise of the Designer's rights under these Terms and Conditions, together with the right to sub-license these rights to the extent reasonably required for the performance of the Designer's obligations and the exercise of the Designer's rights under these Terms and Conditions.
- 6.3 The Client warrants to the Designer that the Client Materials when used by the Designer in accordance with these Terms and Conditions will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

## **7. Intellectual Property Rights**

- 7.1 The Designer hereby:
- (a) assigns to the Client with full title guarantee all of the Intellectual Property Rights in the Assigned Deliverables, whether those Intellectual Property Rights exist on the Effective Date or come into existence during the Term, excluding the Intellectual Property Rights in the Client Materials and the Third Party Materials; this assignment is for the full term of the assigned rights, including all extensions, renewals, reversions and revivals, and includes the right to bring proceedings for past infringements of the assigned rights; and
  - (b) grants to the Client a non-exclusive, worldwide, perpetual and irrevocable license to copy, store, distribute, publish, adapt, edit and otherwise use the Licensed Deliverables (excluding the Third-Party Materials and the Client Materials) for the purpose of advertisement and promotion of the Client's business.
- 7.2 The Designer shall ensure that the Third-Party Materials are:
- (a) licensed to the Client in accordance with the relevant licensor's standard licensing terms;



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- (b) licensed to the Client on reasonable terms notified by the Designer to the Client;
- (c) sub-licensed by the Designer to the Client on reasonable terms notified in writing by the Designer to the Client; or
- (d) sub-licensed by the Designer to the Client on the basis of a non-exclusive, worldwide, perpetual, and irrevocable license to use the Third-Party Materials in connection with the Deliverables,

as reasonably agreed between the parties from time to time.

**7.3 To the maximum extent permitted by applicable law:**

- (a) the Designer irrevocably and unconditionally waives all moral rights (including rights of paternity and rights of integrity) in respect of the Deliverables to which the Designer may at any time be entitled; and
- (b) the Designer undertakes to ensure that all individuals involved in the preparation of the Deliverables will irrevocably and unconditionally waive all moral rights (including rights of paternity and rights of integrity) in respect of the Deliverables to which they may at any time be entitled.

**7.4 The Designer must use [reasonable endeavours] OR [best endeavours] to:**

- (a) do or procure the doing of all acts; and
- (b) execute or procure the execution of all documents,

that the Client may reasonably request from time to time in order to perfect or confirm the Client's ownership of the rights assigned by these Terms and Conditions.

**8. Charges**

**8.1 The Client shall pay the Charges to the Designer in accordance with these Terms and Conditions.**

**8.2 If the Charges are based in whole or part upon the time spent by the Designer performing the Services, the Designer must obtain the Client's written consent before performing Services that result in any estimate of time-based Charges given to the Client being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Client agrees otherwise in writing, the Client shall not be liable to pay to the Designer any Charges in respect of Services performed in breach of this Clause 8.2.**

**8.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Client to the Designer.**



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- 8.4 The Designer may elect to vary any element of the Charges by giving to the Client no less than 30 days' written notice of the variation expiring on any anniversary of the date of execution of the Contract, providing that no such variation shall result in an aggregate percentage increase in the relevant element of the Charges during the Term that exceeds 2% over the percentage increase, during the same period, in the Retail Prices Index (all items) published by the UK Office for National Statistics.

## **9. Timesheets**

- 9.1 The Designer must:

- (a) ensure that the personnel providing Services, the Charges for which will be based in whole or part upon the time spent in the performance of those Services, complete reasonably detailed records of their time spent providing those Services; and
- (b) retain such records during the Term, and for a period of at least 12 months following the end of the Term.

- 9.2 Within 10 Business Days following receipt of a written request, the Designer shall supply to the Client copies of such of the timesheets referred to in Clause 9.1 and in the Designer's possession or control as the Client may specify in that written request.

## **10. Payments**

- 10.1 The Designer shall issue invoices for the Charges to the Client from time to time during the Term OR on or after the invoicing dates set out in Section 7 of the Statement of Work.
- 10.2 The Client must pay the Charges to the Designer within the period of 14 days following the receipt of an invoice issued in accordance with this Clause 10.
- 10.3 The Client must pay the Charges by debit card, credit card, direct debit, bank transfer or cheque (using such payment details as are notified by the Designer to the Client from time to time).
- 10.4 If the Client does not pay any amount properly due to the Designer under these Terms and Conditions, the Designer may:
- (a) charge the Client interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
  - (b) claim interest and statutory compensation from the Client pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.





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**11. Designer's confidentiality obligations**

**11.1 The Designer must:**

- (a) keep the Client Confidential Information strictly confidential;
- (b) not disclose the Client Confidential Information to any person without the Client's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in these Terms and Conditions;
- (c) use the same degree of care to protect the confidentiality of the Client Confidential Information as the Designer uses to protect the Designer's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Client Confidential Information; and
- (e) not use any of the Client Confidential Information for any purpose other than the Permitted Purpose.

**11.2** Notwithstanding Clause 11.1, the Designer may disclose the Client Confidential Information to the Designer's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Client Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Client Confidential Information.

**11.3** This Clause 11 imposes no obligations upon the Designer with respect to Client Confidential Information that:

- (a) is known to the Designer before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the Designer; or
- (c) is obtained by the Designer from a third party in circumstances where the Designer has no reason to believe that there has been a breach of an obligation of confidentiality.

**11.4** The restrictions in this Clause 11 do not apply to the extent that any Client Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Designer on any recognised stock exchange.

**11.5** Upon the termination of the Contract, the Designer must immediately cease to use the Client Confidential Information.



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- 11.6 Within 5 Business Days following the date of termination of the Contract, the Designer must destroy or return to the Client (at the Client's option) all media containing Client Confidential Information, and must irrevocably delete the Client Confidential Information from its computer systems.
- 11.7 The provisions of this Clause 11 shall continue in force [indefinitely following the termination of the Contract] OR [for a period of 5 years following the termination of the Contract, at the end of which period they will cease to have effect].
- 12. Designer's publicity obligations**
- 12.1 The Designer must not make any public disclosures relating to the Contract or the subject matter of the Contract (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed.
- 12.2 Subject to the express confidentiality obligations set out in these Terms and Conditions but notwithstanding the restriction set out in Clause 12.1, the Designer may make the following types of public disclosure without the prior consent of the Client: the existence and nature of the contract between the Client and the Designer, excluding Client confidential information.
- 13. Warranties**
- 13.1 The Designer warrants to the Client that:
- (a) the Designer has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions;
  - (b) the Designer will comply with all applicable legal and regulatory requirements applying to the exercise of the Designer's rights and the fulfilment of the Designer's obligations under these Terms and Conditions; and
  - (c) the Designer has or has access to all necessary know-how, expertise, and experience to perform its obligations under these Terms and Conditions.
- 13.2 The Client warrants to the Designer that it has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions.
- 13.3 All of the parties' warranties and representations in respect of the subject matter of the Contract are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Contract will be implied into the Contract or any related contract.
- 14. Limitations and exclusions of liability**



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- 14.1 Nothing in these Terms and Conditions will:
- (a) limit or exclude any liability for death or personal injury resulting from negligence;
  - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
  - (c) limit any liabilities in any way that is not permitted under applicable law; or
  - (d) exclude any liabilities that may not be excluded under applicable law.
- 14.2 The limitations and exclusions of liability set out in this Clause 14 and elsewhere in these Terms and Conditions:
- (a) are subject to Clause 14.1; and
  - (b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.
- 14.3 The Designer will not be liable to the Client in respect of any losses arising out of a Force Majeure Event.
- 14.4 The Designer will not be liable to the Client in respect of any loss of profits or anticipated savings.
- 14.5 The Designer will not be liable to the Client in respect of any loss of revenue or income.
- 14.6 The Designer will not be liable to the Client in respect of any loss of use or production.
- 14.7 The Designer will not be liable to the Client in respect of any loss of business, contracts, or opportunities.
- 14.8 The Designer will not be liable to the Client in respect of any loss or corruption of any data, database, or software.
- 14.9 The Designer will not be liable to the Client in respect of any special, indirect, or consequential loss or damage.
- 14.10 The liability of the Designer to the Client under the Contract in respect of any event or series of related events shall not exceed the greater of:
- (a) £10,000; and
  - (b) the total amount paid and payable by the Client to the Designer under the Contract in the 12-month period preceding the commencement of the event or events.



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14.11 The aggregate liability of the Designer to the Client under the Contract shall not exceed the greater of:

- (a) £50,000; and
- (b) the total amount paid and payable by the Client to the Designer under the Contract.

## 15. Force Majeure Event

15.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Contract (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

15.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Contract, must:

- (a) promptly notify the other; and
- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

15.3 A party whose performance of its obligations under the Contract is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## 16. Termination

16.1 Either party may terminate the Contract by giving to the other party not less than 30 days' written notice of termination, expiring after the end of the Minimum Term.

16.2 Either party may terminate the Contract immediately by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of the Contract, and the breach is not remediable;
- (b) the other party commits a material breach of the Contract, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches the Contract (irrespective of whether such breaches collectively constitute a material breach).



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16.3 Either party may terminate the Contract immediately by giving written notice of termination to the other party if:

- (a) the other party:
  - (i) is dissolved;
  - (ii) ceases to conduct all (or substantially all) of its business;
  - (iii) is or becomes unable to pay its debts as they fall due;
  - (iv) is or becomes insolvent or is declared insolvent; or
  - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its crDesigners;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract); or
- (d) if that other party is an individual:
  - (i) that other party dies;
  - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
  - (iii) that other party is the subject of a bankruptcy petition or order.

16.4 The Designer may terminate the Contract immediately by giving written notice to the Client if:

- (a) any amount due to be paid by the Client to the Designer under the Contract is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Designer has given to the Client at least 30 days' written notice, following the failure to pay, of its intention to terminate the Contract in accordance with this Clause 16.4.

## 17. Effects of termination



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17.1 Upon the termination of the Contract, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 5.5, 7.1, 7.2, 7.4, 9, 10.2, 10.4, 11, 12, 14, 17, 18.2, 21 and 22.

17.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Contract shall not affect the accrued rights of either party.

## **18. Status of Designer**

18.1 The Designer is not an employee of the Client, but an independent contractor.

18.2 The termination of the Contract will not constitute unfair dismissal; nor will the Designer be entitled to any compensation payments, redundancy payments or similar payments upon the termination of the Contract.

## **19. Notices**

19.1 Any notice given under these Terms and Conditions must be in writing, whether or not described as "written notice" in these Terms and Conditions.

19.2 Any notice from one party to the other party under these Terms and Conditions must be given by one of the following methods (using the relevant contact details set out in Section 8 of the Statement of Work):

(a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or

(b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting,

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

19.3 The addressee and contact details set out in Section 8 of the Statement of Work may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 19.

## **20. Subcontracting**

20.1 The Designer may subcontract any of its obligations under the Contract, providing that the Designer must give to the Client, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.

## **21. General**



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- 21.1 No breach of any provision of the Contract shall be waived except with the express written consent of the party not in breach.
- 21.2 If any provision of the Contract is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Contract will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 21.3 The Contract may not be varied except by a written document signed by or on behalf of each of the parties.
- 21.4 The Client hereby agrees that the Designer may assign the Designer's contractual rights and obligations under the Contract to any successor to all or a substantial part of the business of the Designer from time to time. The Client must not without the prior written consent of the Designer assign, transfer or otherwise deal with any of the Client's contractual rights or obligations under the Contract.
- 21.5 The Contract is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Contract are not subject to the consent of any third party.
- 21.6 Subject to Clause 14.1, these Terms and Conditions shall constitute the entire agreement between the parties in relation to the subject matter of these Terms and Conditions, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 21.7 These Terms and Conditions shall be governed by and construed in accordance with Isle of Man law.
- 21.8 The courts of the Isle of Man shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Contract.

## **22. Interpretation**

- 22.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.



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- 22.2 The Clause headings do not affect the interpretation of these Terms and Conditions.
- 22.3 References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
- 22.4 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.