

Terms and conditions for the supply of marketing and design services



1 Interpretation

1.1 In these Terms:

"CONTRACT" means the contract between You and Creative62 for the provision of the Services comprising the Specification Sheet and these Terms;

"CREATIVE62" means Creative62 Limited, a limited company incorporated in England & Wales with number 07670374 whose registered office is at Units 13 & 14 King Street Buildings, Enderby, Leicester, LE19 4NT;

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

"DELIVERABLES" means all Documents or other materials, and any data or other information developed by Creative62 in relation to the Services and/ or the Project in any form including the deliverables specified in the Specification Sheet;

"DOCUMENT" includes, in addition to a document in Writing, a map, plan, design, drawing, picture or other image, or any other device or record of any information in any form;

"INPUT MATERIAL" means any Documents, information and other materials, and any data or other information provided by You relating to the Services;

"PARTIES" means Creative62 and You and "PARTY" shall mean either one of them;

"PRICE" means the price payable by You to Creative62 in respect of the Services as set out in the Specification Sheet;

"PROJECT" means the project to be undertaken by Creative62 for You as set out in the Specification Sheet;

"SERVICES" means the marketing and/or design services and any other services to be provided by Creative62 for You as set out in the Specification Sheet;

"SPECIFICATION SHEET" means a detailed specification sheet, setting out the Services and the Project, to which these Terms are appended;

"STANDARD CHARGES" means the standard hourly charges made by Creative62 as set out in the Specification Sheet and/or as notified by Creative62 to You from time to time in accordance with these Terms;

"TERMS" means these terms and conditions for the supply of marketing and design services;

"YOU" means the person named on the Specification Sheet as the client for whom Creative62 has agreed to provide the Services in accordance with these Terms and "YOUR" shall be construed accordingly;

"VAT" means value added tax chargeable under English Law for the time being and any similar additional tax; and

"WRITING" or "WRITTEN" includes emails.

1.2 The headings in these Terms are for convenience only and shall not affect their interpretation.

1.3 Reference herein to a "clause" shall be a reference to a clause of these Terms.

2 Supply of the Services

2.1 The Parties have agreed a detailed specification of the Services and the Project as set out in the Specification Sheet. Creative62 shall provide the Services to You upon

these Terms. Any changes or additions to the Services, the Project or these Terms must be agreed in Writing between the Parties. Either Party is entitled to request a meeting to discuss such changes or additions.

2.2 Creative62 shall provide the Services to You from the date specified in the Specification Sheet. The Services shall continue to be supplied until the Project is completed in accordance with the Specification Sheet, unless the Contract is terminated in accordance with clause 8.

2.3 You shall:

2.3.1 at Your own expense supply to Creative62 in a timely manner all Input Material and other materials relating to the Services as Creative62 may request and shall ensure the accuracy of all Input Material; and

2.3.2 co-operate with Creative62 in all matters relating to the Services and the Project.

2.4 Creative62 shall use reasonable endeavours to provide the Services and deliver the Deliverables to You in accordance with the Specification Sheet in all material respects. Creative62 shall use reasonable endeavours to meet any performance dates set out in the Specification Sheet, but any such dates shall be estimates only and time for performance shall not be of the essence of this Contract.

2.5 Creative62 may at any time without notifying You make any changes to the Services or the Project which are necessary to comply with any applicable statutory requirements, or which do not materially affect the nature or quality of the Services or the Project.

3 Price and Payment

3.1 In consideration of the provision of the Services by Creative62, You shall pay the Price and any additional sums (calculated if applicable, with reference to the Standard Charges) which are agreed between the Parties for the provision of the Services or which, in Creative62's sole discretion, are required as a result of Your instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to You.

3.2 You will pay all reasonable out of pocket expenses incurred by Creative62 in relation to the provision of the Services, including travel to your offices where required, the purchase of computer consumables required for, and such other reasonable expenses directly related to, the provision of the Services and delivery of the Deliverables to the extent that such consumables and other expenses are not included in the Price.

3.3 All other charges quoted to You for the provision of the Services are exclusive of any VAT, for which You shall be additionally liable at the applicable rate from time to time.

3.4 Creative62 shall be entitled to invoice You in accordance with the Specification Sheet, or at other times agreed with the You but in absence of such agreement Creative62 shall be entitled to invoice you upon completion of the Project.

3.5 The Price and any additional sums payable shall be paid by You (together with any applicable VAT, and without any set off or other deduction) in cleared funds within 30 days of the date of Creative62's invoice.

3.6 If payment is not made on the due date, Creative62 shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both

before and after any judgment) at the rate of 4% above the base rate from time to time of HSBC Bank plc from the due date until the outstanding amount is paid in full.

4 Approval and Delivery

- 4.1 Creative62 will deliver the Deliverables to You as soon as reasonably practicable after You have provided Your approval of such Deliverables (including, if required, a printer's proof) in Writing ("Your Approval"). Creative62 will deliver the Deliverables to You by way of printed material or the upload of digital artwork or such other data storage method as agreed between the Parties or in absence of such agreement such method as is selected by Creative62 within 14 days of receipt of Your Approval. Creative62 will return to you such of the Input Material as is requested by You in Writing to be so returned.
- 4.2 If You require the Deliverables to be loaded onto a fileserver using File Transfer Protocol (FTP) Creative62 is entitled to make an additional reasonable charge for this service. You are responsible for ensuring that the intended fileserver or disk space on the fileserver is properly configured. Creative62 will not load the Deliverables onto a publicly available fileserver or disk space on such a fileserver until You have complied with clause 4.3.
- 4.3 Upon receipt of Your Approval and delivery by Creative62 of the Deliverables, Creative62 shall be released from undertaking any further work related to the Project. Creative62 may undertake further or additional work requested by You which is related (directly or indirectly) to the completed Project and such further or additional work shall be undertaken for and chargeable to You in addition to the Price and unless otherwise agreed between the Parties, in accordance with the Standard Charges.

5 Intellectual Property Rights

- 5.1 The property and any copyright or other intellectual property rights in any Input Material shall belong to You.
- 5.2 The property and any copyright or other intellectual property rights in any Deliverables shall, unless otherwise agreed in Writing between You and Creative62, belong to Creative62 and shall not be transferred to You unless and until payment in full of the Price and any additional sums payable by You pursuant to the Contract is received by Creative62.
- 5.3 Subject to clause 9 (Marketing) any Input Material or other information provided by You which is so designated by You and any Deliverables shall be kept confidential by Creative62, and all Deliverables or other information provided by Creative62 which is so designated by Creative62 shall be kept confidential by You; but the foregoing shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.
- 5.4 You shall keep in strict confidence all technical or commercial know-how, specifications, inventions or initiatives which are of a confidential nature and have been disclosed to You by Creative62, its employees, agents or consultants and any other confidential information concerning Creative62's business or its products or services which you may obtain.

6 Limitation of Liability – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 6.1 This clause 6 sets out the entire financial liability of Creative62 (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to You in respect of:

- 6.1.1 any breach of this Contract;
- 6.1.2 any use made by you of the Services, the Deliverables or any part of them; and
- 6.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- 6.2 All warranties, conditions or other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.
- 6.3 Nothing in this Contract limits or excludes the liability of Creative62 for death or personal injury resulting from negligence or for any damage or liability incurred by You as a result of the fraud or fraudulent misrepresentation by Creative62.
- 6.4 Subject to clauses 6.2 and 6.3:
- 6.4.1 Creative62 shall not be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of Creative62, its servants, agents or otherwise) which arise out of or in connection with the provision of the Services, the Deliverables or their use by You; and
- 6.4.2 the entire liability of Creative62 under or in connection with the Contract shall not exceed the price paid for the Services.
- 6.5 Creative62 shall have no liability to You for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by You which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non arrival, or any other fault attributable to You.

7. Data protection and data processing

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 7, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 7.2 In the event that Contract involves Creative62 processing Personal Data (as defined in the Data Protection Legislation), the parties acknowledge that for the purposes of the Data Protection Legislation that:
 - (a) You are the data controller; and
 - (b) Creative62 is the data processor(where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 7.3 Without prejudice to the generality of clause 7, You will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Creative62 for the duration and purposes of the Contract.
- 7.4 Either party may, at any time on not less than 30 days' notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

8. Termination and Force Majeure

- 8.1 Subject to clauses 8.3 and 8.4, this Contract shall terminate automatically on completion of the Project in accordance with the Specification Sheet.

- 8.2 Without prejudice to any other rights or remedies which the Parties may have, either Party may (without limiting any other remedy) at any time terminate the Contract by giving Written notice to the other if the other commits any breach of these Terms and (if capable of remedy) fails to remedy the breach within 30 days after being required by Written notice to do so, or if the other goes into liquidation, becomes bankrupt, has a receiver appointed, makes a composition or voluntary arrangement with its creditors or enters administration, or a moratorium comes into force in respect of the other (within the meaning of the Insolvency Act 1986), or the other Party suspends or ceases or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 8.3 On termination of this Contract for any reason:
- 8.3.1 You shall immediately pay to Creative62 all of Creative62's outstanding unpaid invoices and interest and, in respect of Services and/or Deliverables supplied but for which no invoice has been submitted, Creative62 may submit an invoice, which shall be payable immediately on receipt;
- 8.3.2 the accrued rights, remedies, obligations and liabilities of the Parties as at 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; and
- 8.3.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 8.4 Creative62 shall not be liable to You or be deemed to be in breach of the Contract by reason of any delay in performing, or failure to perform, any of Creative62's obligations in relation to the Services and the Project, if the delay or failure was due to any cause beyond Creative62's reasonable control.

9. Marketing and Publicity

- 9.1 You hereby agree and acknowledge that Creative62 may wish to use:-
- 9.1.1 examples of developmental or final completed work forming part of the Project as part of Creative62's future marketing materials; and
- 9.1.2 relevant sections of correspondence attributed to You as reference or testimonial material, and in each case such examples and/or correspondence may be made available in the public domain.
- 9.2 Unless You request in Writing to the contrary, Creative62 shall be entitled to freely use the examples and/or correspondence referred to in clause 9.1 for such purposes as it sees fit. If You make a Written request for Creative62 to cease to use such material which has already been printed or presented on the internet in some form, Creative62 will use all reasonable endeavours to remove the same from the public domain as soon as reasonably practicable.

10 General

- 10.1 These Terms (together with the terms, if any, set out in the Specification Sheet) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in Writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 10.2 A notice required or permitted to be given by either Party to the other under these Terms shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice.
- 10.3 No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.4 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 10.5 Any dispute arising under or in connection with these Terms or the provision of the Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either Party by the President or Deputy President for the time being of the Chartered Institute of Arbitrators. Nothing in this clause shall be construed as prohibiting a Party from applying to a court for interim injunctive relief.
- 10.6 The Contract is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights and obligations under the Contract PROVIDED THAT Creative62 shall be entitled to assign its rights and/or subcontract its obligations to a third party upon giving Written notice to You.
- 10.7 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute one Party the agent of the other Party nor authorise either Party to make or enter into any commitments for or on behalf of the other Party except as expressly set out in the Specification Sheet.
- 10.8 English law shall apply to the Contract, and the Parties agree to submit to the non exclusive jurisdiction of the English courts.