

## Latitude Solutions Ltd. – Terms & Conditions of Business

**Prepared By:**

Jacksons Solicitors: 2 Crawford Place, London W1H 5NA

Tel: 020 7723 1266 Fax: 020 7723 2411 Email: [nigel@jacksonslegal.com](mailto:nigel@jacksonslegal.com)

### 1. Definitions

1.1 In these conditions the following expressions shall have the following meanings:-

<b>“THE AGREEMENT”</b>	means this Agreement together with any Schedules and any matters referred to in the Brief.
<b>“THE BRIEF”</b>	means the brief set out in the Estimate. [or the Brief]
<b>“CLIENT CONTENT”</b>	means any text, corporate images, photographs, illustrations or other content supplied by the Client to the Company.
<b>“THE CLIENT”</b>	means the person, firm or corporation referred to in the Estimate.
<b>“CONTRACT”</b>	means this Agreement formed by the Client's acceptance of the quotation as set out in the Estimate and any further contracts pursuant to this Agreement.
<b>“THE DEPOSIT”</b>	means a deposit of not less than fifty percent of the estimated printing costs as set out in the Estimate.
<b>“THE COMPANY”</b>	means Latitude Solutions Limited (registered No. 04014764) whose registered office is at 1 <sup>st</sup> Floor, (North) Devonshire House, Devonshire Street, London W1W 5DS
<b>“THE MARKETING CONCEPT”</b>	means the branding, marketing or design concept formulated by the Company pursuant to the Brief.
<b>“[COMPANY'S] CONTENT”</b>	means any content originated by the Company.
<b>“THE ESTIMATE”</b>	means the estimate provided by the Company to the Client.
<b>“GOODS”</b>	means the various incorporations of the brand, marketing concept or design in the physical/virtual form as set out in the Estimate.
<b>“INTELLECTUAL PROPERTY RIGHTS”</b>	means any and all vested contingent and future rights, including any extensions or renewals as far as possible in perpetuity, of copyright, Company right, know-how, patent, registered Company right, service mark, trademark, moral and any other intellectual property rights of any description whatsoever.
<b>“RETAINER AGREEMENT”</b>	means the retainer terms and conditions as set out in clause [ ] where the client has opted for this form of agreement.
<b>“TERRITORY”</b>	means the world.
<b>["WORK”</b>	means the final products developed by the Company pursuant to the Brief and accepted as such by the Client.]

- 1.2 Reference to statute or statutory provision includes a reference to it as from time to time amended, extended or re-enacted.
- 1.3 Words denoting the singular number only, include the plural and vice versa.
- 1.4 Words denoting the masculine gender shall include the feminine and neuter genders and vice versa.
- 1.5 Unless the context otherwise requires, references to a clause or schedule is to a clause of or schedule of this Agreement.
- 1.6 The headings in this Agreement are inserted for convenience only and do not affect its construction.

## **2. Company's Production Responsibility**

- 2.1 The Company shall be responsible for the production and delivery of the Work specified in the Brief to the Client.

The responsibilities of the Company shall include the following:

- 2.1.1 Creation of the Company's Concept including alternative creative proposals set out either in writing or in the form of colour presentation roughs and production of the final Company and layout of each item presented as colour presentation roughs or in the form of a mock up website.
- 2.1.2 Unless set out in the Brief all other matters relating to the commissioning of paper, printing, photographs, any other Company work, binding and cover, shall be the responsibility of the Client and its agents who shall be responsible to ensure payment for the same. If the Client wishes the Company to commission any of these items then the same will be charged at the rates set out in the Brief and fifty per cent of any relevant sums plus value added tax or relevant sales tax shall be required in advance of any such work being commissioned.
- [2.1.3 The Company shall consult with the Client on a regular basis throughout the time spent developing the Work by sending drafts to the Client and the Client shall sign these off to indicate satisfaction with the progress made.]
- 2.1.4 The Company shall follow the reasonable directions of the Client in respect of the overall tone and direction of the Brief

## **3. Proof Correction and Artwork**

- 3.1 The Client shall be forwarded by the Company finished artwork in electronic format for amendment/approval prior to final (colour proofing) stage. The Client undertakes to read, check and correct the proofs of the Work and return them to the Company within such period of time as shall have been mutually agreed, failing which the Company shall consider the proofs duly approved, and on such approval the Company shall have no liability as to typographical mistakes subsequently discovered.
- 3.2 Costs of all corrections and alterations made by the Company in the finished artwork and the proofs in excess of amendments made to the laser proofs supplied in accordance with clause 3.1 shall be borne by the Client.

## **4. Ownership, Proprietary Rights and Licences**

- 4.1 The Client shall own all right, title, and interest in and to the Client Content. Subject to Clause 4.2 the Company shall own all right, title and interest in and to the Company's Content and the Marketing Concept.
- 4.2 On full payment of any sums due as set out in Clause 8 the Company will grant the Client a perpetual, non-exclusive, non-transferable licence to all Intellectual Property Rights in the Work throughout the Territory subject to clause 4.3 below.
- 4.3 The licence hereby granted to the Client in respect of the Work is solely in respect of the uses as stated on the Brief within the Territory and the Company subject to Clause 4.2 hereby grants a perpetual licence in respect of the same but this use expressly excludes (unless otherwise agreed in writing with the Client) any right to use the Work, or any derivative of it, in any form or medium other than that set out in the Brief.
- 4.4 For clarity the Company retains all Intellectual Property Rights, and will not grant a licence, or be deemed to have granted a licence, in respect of any concepts, designs or otherwise created pursuant to the Brief but not utilised in the Work.
- 4.5 Nothing in this Agreement shall be so construed as to require the Company to assign to the Client any rights whatsoever in relation to such ideas, know-how, methodologies, expertise and techniques developed by the Company whether prior to or in the course of the performance of this Agreement or which together constitute the expertise which the Company brings to bear on the performance of its obligations under this Agreement.

- 4.6 The Client shall advise the Company of the quotation or inclusion in the Work of any textual or illustrative material from any source other than itself and the Client shall ensure that written permission has been secured from and fees paid to the copyright holders for the inclusion of such material. The Client will advise

if appropriate acknowledgement is needed in the Work, and the Company shall include such acknowledgement in the Work.

## 5. Confidentiality

- 5.1 The Company acknowledges that, during the course of this Agreement it will be entrusted with, and further develop, confidential information relating to the business of the Client. The Company agrees that it will not use such confidential information for any purpose except the performance of this Agreement and that it will not disclose any such confidential information to any person unless such disclosure is authorised by the other party in writing.
- 5.2 The foregoing obligation of confidentiality will not apply to information that: (i) is or becomes generally known or available by publication or otherwise through no fault of the Company; (ii) is known by the Company prior to the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by the Company pursuant to this Agreement; (iv) is lawfully obtained from a third party, including end-user customers, who have the right to make such disclosure without restriction; or (v) is released for publication by the Client in writing.

## 6. Warranties and Indemnities

- 6.1 The Company hereby warrants to the Client that:-
- 6.1.1 The Company has the right and power to enter into this Agreement;
- 6.1.2 It is skilled and experienced in producing marketing concepts, design or otherwise equivalent to the Work the subject of the Brief. The Company acknowledges that the Client is relying upon the skill and expertise of the Company for the performance of this Agreement and the Company warrants that it will perform the services described herein in a good and workmanlike manner and in accordance with the Brief.
- 6.1.3 save for any copy supplied by the Client or the Client's contributors the Company's part in the Work will in no way give rise to a violation of any existing copyright or a breach of any existing agreement;
- 6.1.4 save for any copy supplied by the Client or the Client's contributors the Company's part in the Work will contain nothing obscene, defamatory or libellous and all statements contained therein purporting to be facts will be true;
- 6.2 The Company will indemnify the Client against any loss, injury or damage (including any legal costs or expenses and any compensation costs or disbursements paid by the Client on the advice of the Clients' legal advisers to compromise or settle any claim) arising out of any breach or alleged breach of the foregoing warranties.
- 6.3 The Client hereby warrants to the Company that:-
- 6.3.1 the Client has the right and power to enter into this Agreement;
- 6.3.2 the Client's part in the Work will in no way give rise to a violation of any existing copyright or a breach of any existing agreement;
- 6.3.3 the Client's part in the Work will contain nothing obscene, defamatory or libellous and all statements contained therein purporting to be facts will be true.
- 6.4 The Client will indemnify the Company or its agents against any loss, injury or damage (including any legal costs or expenses and any compensation costs or disbursements paid by the Company or its agents on the advice of the Company's legal advisers to compromise or settle any claim) arising out of any breach or alleged breach of the foregoing warranties.
- 6.5 The foregoing warranties and indemnity shall survive the termination of this Agreement.
- 6.6 **DISCLAIMER. SAVE IN RESPECT OF THE WARRANTIES CONTAINED IN CLAUSE 6 THE FOREGOING ARE THE ONLY WARRANTIES MADE BY EITHER PARTY. BOTH PARTIES SPECIFICALLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

## 7. Limitation of Liability

7.1 The liability of the Company to the Client shall be limited to direct damages and, shall not in any circumstance exceed the amount of the total fees paid in respect of the Brief by the Client to the Company during the term of this Agreement. The Company will not be liable for incidental, special, or consequential damages including lost profits or lost business suffered by the Client, even if it has previously been advised

of the possibility of such damages. For the avoidance of doubt prior to any claim being made the Company will be given full access and opportunity to rectify any wrong that may have been committed.

7.2 Whilst all reasonable care will be taken with material supplied by the Client the Company cannot be held liable whether in negligence or otherwise for the loss of any such material and back-up copies of the same will be held by the Client.

7.3 No third party shall have any rights under or in connection with this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999

## 8. Terms of payment to the Company [Ordinary Basis]

The Client shall pay the Company for the services to be performed under this Agreement as follows:

8.1 Within 30 days of the relevant invoice [50%] of the sum set out in the Estimate plus VAT after the Company has produced the creative proposals referred to in clause 2.1.1 and the Client has accepted a proposal as the basis of the Work.

8.2 In the event that the Work is not completed within three months of the acceptance of the Estimate by the Client, for whatever reasons other than default by the Company, then the Company reserves the right to submit invoices for any work done to cover all costs and other items as the relevant proportion of its fee and such invoices must be paid within 30 days of the date thereof.

8.3 Within 30 days of the relevant invoice the balance of the sum set out in the Estimate plus VAT to be paid on the delivery of the Work to the Client as referred to in the Estimate.

8.4 In respect of any printing or photographic work fifty per cent or such greater sum as it thinks appropriate of any print costs on receipt of order being the Deposit, any balance to be paid on delivery of all printed material.

8.5 The Company reserves the right, on giving reasonable notice (not being less than 30 days) to the Client, to increase the price of the services and the Goods pursuant thereto to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of

8.6 duties, significant increase in the costs of labour, materials or other costs of manufacture, printing or paper), any change in delivery dates, quantities or specifications for the Goods which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give the Company adequate information, instructions, or copy for insertion.

8.6 Except as otherwise stated under the terms of any quotation or unless otherwise agreed in writing between the Client and the Company, all prices given by the Company are on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the Client's premises as referred to, the Client shall be liable to pay the Company's charges for transport, packaging and insurance.

8.7 The price is exclusive of any applicable value added tax or other relevant sales tax, which the Client shall be additionally liable to pay to the Company.

8.8 The Company shall be entitled to recover the price, notwithstanding that delivery may have taken place late in respect of the same. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

8.9 If the Client fails to make any payment on or before the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

8.9.1 cancel the contract or suspend any further deliveries to the Client;

8.9.2 appropriate any payment made by the Client to such of the Goods as the Company may think fit (notwithstanding any purported appropriation by the Client); and

8.9.3 charge the Client interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank Plc base rate, from time to time, compounded quarterly, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

**9. Terms of Payment to the [Retainer Basis]**

- 9.1 As an alternative to our normal charging basis the Company has agreed with the Client to charge on a monthly basis the sum referred to in Schedule [ ]

**10. Delivery**

- 10.1 The Company agrees to have ready for printing or otherwise by the date referred to in the Brief those items referred to in such Brief.
- 10.2 Delivery of the Goods shall be made by the Company or its agents delivering the Goods to the Client's premises at any time after the Company has notified the Client that the Goods are ready for delivery or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 10.3 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Client.
- 10.4 Where the Goods are to be delivered in instalments (and for the purposes of this Contract each delivery in respect of any element of the Work shall be deemed to be an instalment), each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these terms and conditions or any claim by the Client in respect of any one or more instalments shall not entitle the Client to treat the Contract as a whole as repudiated.
- 10.5 If the Client fails to take delivery of the Goods or fails to give the Company or its agents adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Client's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may store the Goods until actual delivery and charge the Client for the reasonable costs (including insurance) of storage.

**11. Risk and Property**

Risk of damage to or loss of the Goods shall pass to the Client at the time of delivery or, if the Client wrongfully fails to take delivery of the Goods, the time when the Company or its agents has tendered delivery of the Goods.

**12. Termination of Contract**

- 12.1 Save in respect of Retainer Contracts, either party may in writing to the other terminate this Agreement on [three] month's notice.
- 12.2 Save in respect of an event of force majeure the Client or the Company may terminate this Agreement by summary notice in writing to the other if the Company or the Client is in material breach of any of the provisions of this Agreement and has failed to remedy such breach within 21 days of notice in writing to them from the other of such breach.
- 12.3 This Agreement shall terminate on immediate written notice if and when a manager, receiver, or other encumbrancer takes possession of, or is appointed over the whole or any substantial part of, the Client's or the Company's assets; or if and when the Client or the Company enters into any arrangement or composition with or for the benefit of their creditors (including any voluntary arrangement under the Insolvency Act 1986); or if and when a petition is presented or a meeting is convened for the purpose of considering a resolution for the making of an administration order, the winding up or dissolution of the Client or the Company (otherwise than a voluntary liquidation for the purposes of reconstruction).
- 12.4 Upon termination of this Agreement under Clause 12.1, 12.2 or 12.3 hereof, all rights of the Client in the Client Content shall revert to the Client but any licence granted by the Company in the Work shall, if any sums remain outstanding, revert to the Company without prejudice to any claim which the Company may have for monies due and/or damages and/or otherwise.
- 12.5 Nothing herein before contained shall prejudice any claim or demand which any party hereto may have against the other under the provisions hereof or in respect of any antecedent breach of such provision or by reason of the determination of this Agreement.
- 12.6 If the Client for any reason terminates this Agreement then the Company reserves the right to charge for work completed as of the date of such notice, including pro-rated fees and expenses for items partially complete at time of termination, such invoices to be paid within 7 days of the date of the invoice. If the Client fails to make payment on

or before the due date, then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to the benefit of Clause 8.9.3 of this Agreement. Upon receipt of all sums due to the Company, the Company will deliver to the Client copies of the work on any specific matter completed to

that date. Intellectual Property Rights in this uncompleted work will be dealt with, on full payment of sums owing, as per Clause 4 of this Agreement.

**13. Force majeure**

If the Company shall be delayed in or prevented from completing and delivering the Work or if the Company shall be delayed or prevented from performing its obligations in accordance with this Agreement by reason of any act, delay or omission caused by circumstances beyond its control including without limitation strikes, lock-outs, labour disputes, labour shortages, accident, fire, explosion or inability to obtain materials, facilities, equipment or power then in any such event the Company shall not be liable to the other for such delay or failure nor shall it give rise to a breach of this Agreement.

**14. Waiver of Remedies**

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

**15. Severability**

Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the remainder (if any) of such provision and the other provisions of this Agreement shall remain in full force and effect.

**16. Notices**

Any notice required or desired to be given under this Agreement shall be in writing and shall be deemed to have been duly served if delivered or sent by facsimile transmission or pre-paid first class post correctly addressed to the relevant party at the party's address given in this Agreement or such other address that has been notified by the party to the other from time to time and any notice so given shall be deemed to have been given at the time of receipt.

**17. No Partnership**

Nothing herein contained or to be done hereunder shall be deemed to constitute a partnership between the parties hereto and none of them shall do or cause to be done anything whereby it shall or it may be represented that it is a part of the others.

**18. Entire Agreement**

This Agreement contains the entire understanding between the parties with regard to the development, production and distribution of the Work and supersedes all previous agreements, undertakings, warranties (save as referred to herein) whether written or oral and any amendment hereto shall only be valid if in writing signed by the parties.

**19. Assignment**

This Agreement and the rights and obligations hereunder may not be assigned in whole or in part by either party without the prior written consent of the other party, and any purported assignment without such written consent shall be void and of no effect.

**20. Governing Law**

This Agreement shall be deemed to be a contract made in England and shall be construed and applied in all respects in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.

## Contact information:

**Latitude Solutions Ltd.**  
Media House  
131 Great Tichfield Street  
London W1W 5BB

Tel: +44(0)20 33 56 96 56  
E: [enquiries@latitudesolutions.co.uk](mailto:enquiries@latitudesolutions.co.uk)  
W: [latitudesolutions.co.uk](http://latitudesolutions.co.uk)

Registered Address:  
1<sup>st</sup> Floor  
(North) Devonshire House  
Devonshire Street  
London W1W 5DS

Company Registration No.: 04014764  
VAT Reg. No.: 761 0066 60