

Elite Media Solutions Ltd

0. INITIAL TERMS

0.1 The Terms & Conditions can be supplied in writing upon request.

0.2 These terms & conditions constitute a valid and binding agreement between Elite Media Solutions Ltd and you, the client, for any services provided or work ordered.

1. DEFINITIONS.

As used herein and throughout this Agreement.

1.1 Agreement means the entire content of this Basic Terms and Conditions document, the Proposal document(s), together with any other Supplements designated below, schedules or attachments hereto.

1.2 Client Content means all materials, information, photography, writings and other creative content provided by The Client for use in the preparation of and/or incorporation in the Deliverables.

1.3 Copyrights means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under U.K. Copyright Law.

1.4 Deliverables means the services and work product specified in the Proposal to be delivered by Elite Media Solutions Ltd to The Client, in the form and media specified in the Proposal.

1.5 Designer Tools means all design tools developed and/or utilised by Elite Media Solutions Ltd in performing the Services, including without limitation pre-existing and newly developed software including source code, Web authoring tools, type fonts, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as Web site design, architecture, layout, navigational and functional elements.

1.6 The Client means the company or individual who has agreed to take out work with Elite Media Solutions Ltd

1.7 Final Art means all creative content developed or created by Elite Media Solutions Ltd, or commissioned by Elite Media Solutions Ltd, exclusively for the Project and incorporated into and delivered as part of the Final Deliverables, including and by way of example, not limitation, any and all visual designs, visual elements, graphic design, illustration, photography, animation, sounds, typographic treatments and text, modifications to The Client Content, and Elite Media Solutions Ltd selection, arrangement and coordination of such elements together with The Client Content and/or Third Party Materials.

1.8 Final Deliverables means the final versions of Deliverables provided Elite Media Solutions Ltd and accepted by The Client.

1.9 Preliminary Works means all artwork including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by Elite Media Solutions Ltd and which may or may not be shown and or delivered to The Client for consideration but do not form part of the Final Art.

1.10 Project means the scope and purpose of The Client's identified usage of the work product as described in the Proposal.

1.11 Services means all services and the work product to be provided to The Client by Elite Media Solutions Ltd as described and otherwise further defined in the Proposal.

1.12 Third Party Materials means proprietary third party materials which are incorporated into the Final Deliverables, including without limitation stock photography or illustration.

1.13 Trademarks means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables to designate the origin or source of the goods or services of The Client.

2. PROPOSAL.

The terms of the Proposal or shall be effective for 30 days after presentation to The Client. In the event this Agreement is not executed by The Client within the time identified, the Proposal, together with any quotations, related terms and conditions and deliverables, may be subject to amendment, change or substitution.

3. FEES AND CHARGES.

3.1 Fees. In consideration of the Services to be performed by Elite Media Solutions Ltd, The Client shall pay to Elite Media Solutions Ltd fees in the amounts and according to the payment schedule set forth in the Proposal, and all applicable sales, use or value added taxes, even if calculated or assessed subsequent to the payment schedule.

3.2 Additional Costs. The Project pricing includes Elite Media Solutions Ltd fee only. Any and all outside costs including, but not limited to, equipment rental, photographer's costs and fees, photography and/or artwork licenses, prototype production costs, talent fees, music licenses, and online access or hosting fees, will be billed to The Client unless specifically otherwise provided for in the Proposal.

3.3 Invoices. All invoices are payable within 7 days of receipt. For new clients or those overseas Elite Media Solutions Ltd reserves the right to invoice with a payable 50% on placement of order and balance on completion. We understand and will exercise our statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if we are not paid according to agreed credit terms. Interest is charged daily at 8% over the Bank of England base rate along with EU late payment charges. Payments will be credited first to late payment charges and next to the unpaid balance. The Client shall be responsible for all collection or legal fees necessitated by late or default in payment. Elite Media Solutions Ltd reserves the right to withhold delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are conditioned upon receipt of payment in full which shall be inclusive of

any and all outstanding Additional Costs, Taxes, Expenses, and Fees, Charges or the costs of Changes.

3.4 Project End. All deliverables shall be deemed complete once The Client has signed off the work or indicated satisfaction either verbally, in writing, via e-mail, post or other methods. If The Client fails to communicate with Elite Media Solutions Ltd for a period of more than 30 days without explanation, the project shall be deemed satisfactory and complete.

4. CHANGES.

4.1 General Changes. Unless otherwise provided in the Proposal, and except as otherwise provided for herein, The Client shall pay additional charges for changes requested by The Client which are outside the scope of the Services on a time and materials basis, at Elite Media Solutions Ltd hourly rate of £35 per hour. Such charges shall be in addition to all other amounts payable under the Proposal, despite any maximum budget, contract price or final price identified therein. Elite Media Solutions Ltd may extend or modify any delivery schedule or deadlines in the Proposal and Deliverables as may be required by such Changes.

4.2 Substantive Changes. If The Client requests or instructs Changes that amount to a revision in or near excess of fifty percent (50%) of the time required to produce the Deliverables, and or the value or scope of the Services, Elite Media Solutions Ltd shall be entitled to submit a new and separate Proposal to The Client for written approval. Work shall not begin on the revised services until a fully signed revised Proposal and, if required, any additional retainer fees are received by Elite Media Solutions Ltd.

4.3 Timing. Elite Media Solutions Ltd will prioritize performance of the Services as may be necessary or as identified in the Proposal, and will undertake commercially reasonable efforts to perform the Services within the time(s) identified in the Proposal. The Client agrees to review Deliverables within the time identified for such reviews and to promptly either, (i) Approve the Deliverables in writing or (ii) provide written comments and/or corrections sufficient to identify The Client's concerns, objections or corrections to Elite Media Solutions Ltd. Elite Media Solutions Ltd shall be entitled to request written clarification of any concern, objection or correction. The Client acknowledges and agrees Elite Media Solutions Ltd's ability to meet any and all schedules is entirely dependent upon The Client's prompt performance of its obligations to provide materials and written approvals and/or instructions pursuant to the Proposal and that any delays in The Client's performance or Changes in the Services or Deliverables requested by The Client may delay delivery of the Deliverables. Any such delay caused by The Client may result in credit based accounts being invoiced before project completion.

4.4 Testing and Acceptance. Elite Media Solutions Ltd will exercise commercially reasonable efforts to test Deliverables requiring testing and to make all necessary corrections prior to providing Deliverables to The Client. The Client, within five (5) business days of receipt of each Deliverable, shall notify Elite Media Solutions Ltd, in writing, of any failure of such Deliverable to comply with the specifications set forth in the Proposal, or of any other objections, corrections, changes or amendments The Client wishes made to such Deliverable. Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and Elite Media Solutions Ltd will undertake to make the same in a commercially timely manner. Any and all objections, corrections, changes or amendments

shall be subject to the terms and conditions of this Agreement. In the absence of such notice from The Client, the Deliverable shall be deemed accepted.

5. THE CLIENT RESPONSIBILITIES.

The Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner:

- (a) Coordination of any decision-making with parties other than Elite Media Solutions Ltd;
- (b) Provision of The Client Content in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Proposal;
- (c) Final proofreading. In the event that The Client has approved Deliverables but errors, such as, by way of example, not limitation, typographic errors or misspellings, remain in the finished product; The Client shall incur the cost of correcting such errors.

6. ACCREDITATION/PROMOTIONS.

Elite Media Solutions Ltd retains the right to reproduce, publish and display the Deliverables in Elite Media Solutions Ltd Design's, portfolios and Web sites, and in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses. Either party, subject to the other's reasonable approval, may describe its role in relation to the Project and, if applicable, the services provided to the other party on its Web site and in other promotional materials, and, if not expressly objected to, include a link to the other party's Web site.

7. CONFIDENTIAL INFORMATION.

Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party, including without limitation Preliminary Works (Confidential Information). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the Proposal except as may be required by a court or governmental authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

8. RELATIONSHIP OF THE PARTIES.

8.1 Independent Contractor. Elite Media Solutions Ltd is an independent contractor, not an employee of The Client or any company affiliated with The Client. Elite Media Solutions Ltd shall provide the Services under the general direction of The Client, Elite Media Solutions Ltd shall determine, in Elite Media Solutions Ltd sole discretion, the manner and means by

which the Services are accomplished. This Agreement does not create a partnership or joint venture and neither party is authorised to act as agent or bind the other party except as expressly stated in this Agreement. Elite Media Solutions Ltd and the work product or Deliverables prepared by Elite Media Solutions Ltd shall not be deemed a work for hire as that term is defined under Copyright Law. All rights if any granted to The Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this Agreement.

8.2 Elite Media Solutions Ltd Agents. Elite Media Solutions Ltd shall be permitted to engage and/or use third party Elite Media Solutions Ltd or other service providers as independent contractors in connection with the Services (Design Agents). Notwithstanding, Elite Media Solutions Ltd shall remain fully responsible for such Design Agents compliance with the various terms and conditions of this Agreement.

8.3 No Exclusivity. The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. The Client is free to engage others to perform services of the same or similar nature to those provided by Elite Media Solutions Ltd, and Elite Media Solutions Ltd shall be entitled to offer and provide design services to others, solicit other The Clients and otherwise advertise the services offered by Elite Media Solutions Ltd.

9. WARRANTIES AND REPRESENTATIONS.

9.1 The Client represents, warrants and covenants to Elite Media Solutions Ltd that (a) The Client owns all rights, titles, and interest in, or otherwise has full right and authority to permit the use of the The Client Content, (b) to the best of The Client's knowledge, the The Client Content does not infringe the rights of any third party, and use of the The Client Content as well as any Trademarks in connection with the Project does not and will not violate the rights of any third parties, (c) The Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and (d) The Client shall comply with all laws and regulations as they relate to the Services and Deliverables.

9.2 To the best of Elite Media Solutions Ltd knowledge, the Final Art provided Elite Media Solutions Ltd and Elite Media Solutions Ltd subcontractors does not infringe the rights of any party, and in connection with the Project will not violate the rights of any third parties. In the event The Client or third parties modify or otherwise use the Deliverables outside of the scope or for any purpose not identified in the Proposal or this Agreement or contrary to the terms and conditions noted herein, all representations and warranties of Elite Media Solutions Ltd shall be void.

The Client agrees to fully indemnify and hold Elite Media Solutions Ltd free from harm in any and all claims resulting from The Client in not having obtained all the required copyright, and/or any other necessary permission. Any artwork, images, or text supplied or designed by Elite Media Solutions Ltd on behalf of the customer, will remain the property of Elite Media Solutions Ltd and/or our suppliers unless otherwise explicitly stated.

10. INDEMNIFICATION/LIABILITY.

10.1 By The Client. The Client agrees to indemnify, save and hold harmless Elite Media Solutions Ltd from any and all damages, liabilities, costs, losses or expenses arising out of

any claim, demand, or action by a third party arising out of any breach of The Client's responsibilities or obligations, representations or warranties under this Agreement. Under such circumstances Elite Media Solutions Ltd shall promptly notify The Client in writing of any claim or suit; (a) The Client has sole control of the defence and all related settlement negotiations; and (b) Elite Media Solutions Ltd provides The Client with commercially reasonable assistance, information and authority necessary to perform The Client's obligations under this section. The Client will reimburse the reasonable out-of-pocket expenses incurred by Elite Media Solutions Ltd in providing such assistance.

10.2 By Elite Media Solutions Ltd. Subject to the terms, conditions, express representations and warranties provided in this Agreement, Elite Media Solutions Ltd agrees to indemnify, save and hold harmless The Client from any and all damages, liabilities, costs, losses or expenses arising out of any finding of fact which is inconsistent with Elite Media Solutions Ltd's representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct of The Client provided that (a) The Client promptly notifies Elite Media Solutions Ltd in writing of the claim; (b) Elite Media Solutions Ltd shall have sole control of the defence and all related settlement negotiations; and (c) The Client shall provide Elite Media Solutions Ltd with the assistance, information and authority necessary to perform Elite Media Solutions Ltd's obligations under this section. Notwithstanding the foregoing Elite Media Solutions Ltd shall have no obligation to defend or otherwise indemnify The Client for any claim or adverse finding of fact arising out of or due to The Client Content, any unauthorised content, improper or illegal use, or the failure to update or maintain any Deliverables provided by Elite Media Solutions Ltd.

10.3 Limitation of Liability. THE SERVICES AND THE WORK PRODUCT OF ELITE MEDIA SOLUTIONS LTD ARE SOLD AS IS. IN ALL CIRCUMSTANCES, THE MAXIMUM LIABILITY OF ELITE MEDIA SOLUTIONS LTD, ITS DIRECTORS, OFFICERS, EMPLOYEES, DESIGN AGENTS AND AFFILIATES (ELITE MEDIA SOLUTIONS LTD PARTIES), TO THE CLIENT FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND THE CLIENT'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO THE NET PROFIT OF ELITE MEDIA SOLUTIONS LTD. IN NO EVENT SHALL ELITE MEDIA SOLUTIONS LTD BE LIABLE FOR ANY LOST DATA OR CONTENT, LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MATERIALS OR THE SERVICES PROVIDED BY ELITE MEDIA SOLUTIONS LTD, EVEN IF ELITE MEDIA SOLUTIONS LTD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. TERMINATION.

11.1 This Agreement shall commence upon the Effective Date and shall remain effective until the Services are completed and delivered.

11.2 This Agreement may be terminated at any time by either party effective immediately upon notice, or the mutual agreement of the parties, or if any party:

(a) becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or

(b) breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within ten (10) days from receipt of written notice of such breach.

11.3 In the event of termination, Elite Media Solutions Ltd shall be compensated for the Services performed through the date of termination in the amount of (a) any advance payment, (b) a prorated portion of the fees due, or (c) hourly fees for work performed by Elite Media Solutions Ltd or Elite Media Solutions Ltd's agents as of the date of termination, whichever is greater; and The Client shall pay all Expenses, fees, out of pockets together with any Additional Costs incurred through and up to, the date of cancellation.

11.4 In the event of termination by The Client and upon full payment of compensation as provided herein, Elite Media Solutions Ltd grants to The Client such right and title as provided for in Schedule A of this Agreement with respect to those Deliverables provided to, and accepted by The Client as of the date of termination.

11.5 Upon expiration or termination of this Agreement: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) other than as provided herein, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.

11.6 Projects that have passed 30 days without contact or further instruction from The Client are deemed to be final

12. GENERAL.

12.1 Modification/Waiver. This Agreement may be modified by the parties. Any modification of this Agreement must be in writing, except that Elite Media Solutions Ltd's invoices may include, and The Client shall pay, expenses or costs that The Client authorises by electronic mail in cases of extreme time sensitivity. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.

12.2 Notices. All notices to be given hereunder shall be transmitted in writing either by facsimile or electronic mail with return confirmation of receipt or by certified or registered mail, return receipt requested, and shall be sent to the to the addresses identified below, unless notification of change of address is given in writing. Notice shall be effective upon receipt or in the case of fax or e-mail, upon confirmation of receipt.

12.3 No Assignment. Neither party may assign, whether in writing or orally, or encumber its rights or obligations under this Agreement or permit the same to be transferred, assigned or encumbered by operation of law or otherwise, without the prior written consent of the other party.

12.4 Force Majeure. Elite Media Solutions Ltd shall not be deemed in breach of this Agreement if Elite Media Solutions Ltd is unable to complete the Services or any portion thereof by reason of fire, earthquake, labour dispute, act of God or public enemy, death,

illness or incapacity of Elite Media Solutions Ltd or any local, state, federal, national or international law, governmental order or regulation or any other event beyond Elite Media Solutions Ltd's control (collectively, Force Majeure Event). Upon occurrence of any Force Majeure Event, Elite Media Solutions Ltd shall give notice to The Client of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.

12.5 Governing Law and Dispute Resolution. The formation, construction, performance and enforcement of this Agreement shall be in accordance with the laws of the United Kingdom without regard to its conflict of law provisions or the conflict of law provisions of any other jurisdiction. In the event of a dispute arising out of this Agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties. The prevailing party in any dispute resolved by binding arbitration or litigation shall be entitled to recover its solicitor's fees and costs. In all other circumstances, the parties specifically consent to the local, and national courts located in the United Kingdom. The parties hereby waive any jurisdictional or venue defences available to them and further consent to service of process by mail. The Client acknowledges that Elite Media Solutions Ltd will have no adequate remedy at law in the event The Client uses the deliverables in any way not permitted hereunder, and hereby agrees that Elite Media Solutions Ltd shall be entitled to equitable relief by way of temporary and permanent injunction, and such other and further relief at law or equity as any arbitrator or court of competent jurisdiction may deem just and proper, in addition to any and all other remedies provided for herein.

12.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision.

12.7 Headings. The numbering and captions of the various sections are solely for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of the provisions of this Agreement nor shall such headings otherwise be given any legal effect.

13. RIGHTS TO DELIVERABLES OTHER THAN FINAL ART.

13.1 The Client Content. The Client Content, including all pre-existing Trademarks, shall remain the sole property of The Client or its respective suppliers, and The Client or its suppliers shall be the sole owner of all rights in connection therewith. The Client hereby grants to Elite Media Solutions Ltd a nonexclusive, non-transferable license to use, reproduce, modify, display and publish The Client Content solely in connection with Elite Media Solutions Ltd's performance of the Services and limited promotional uses of the Deliverables as authorised in this Agreement.

13.2 Third Party Materials. All Third Party Materials are the exclusive property of their respective owners. Elite Media Solutions Ltd shall inform The Client of all Third Party Materials that may be required to perform the Services or otherwise integrated into the Final Art. Under such circumstances Elite Media Solutions Ltd shall inform The Client of any need to license, at The Client's expense, and unless otherwise provided for by The Client, Elite Media Solutions Ltd shall obtain the license(s) necessary to permit The Client's use of the

Third Party Materials consistent with the usage rights granted herein. In the event The Client fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of third party art, The Client hereby indemnifies, saves and holds harmless Elite Media Solutions Ltd from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of The Client's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the Final Art.

13.3 Preliminary Works. Elite Media Solutions Ltd retains all rights in and to all Preliminary Works. The Client shall return all Preliminary Works to Elite Media Solutions Ltd within thirty (30) days of completion of the Services and all rights in and to any Preliminary Works shall remain the exclusive property of Elite Media Solutions Ltd.

13.4 Original Artwork. Elite Media Solutions Ltd retains all right and title in and to any original artwork comprising Final Art, including all rights to display or sell such artwork. The Client shall return all original artwork to Elite Media Solutions Ltd within thirty (30) days of completion of the Services.

13.5 Trademarks. Upon completion of the Services and expressly conditioned upon full payment of all fees, costs and out-of-pocket expenses due, Elite Media Solutions Ltd assigns to The Client all ownership rights, including any copyrights, in and to any artworks or designs comprising the works created by Elite Media Solutions Ltd for use by The Client as a Trademark. Elite Media Solutions Ltd shall cooperate with The Client and shall execute any additional documents reasonably requested by The Client to evidence such assignment. The Client shall have sole responsibility for ensuring that any proposed trademarks or Final Deliverables intended to be a Trademark are available for use in commerce and federal registration and do not otherwise infringe the rights of any third party. The Client hereby indemnifies, saves and holds harmless Elite Media Solutions Ltd from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by any third party alleging any infringement arising out of The Client's use and/or failure to obtain rights to use or use of the Trademark.

14. RIGHTS TO FINAL ART.

14.1 Upon completion of the Services, and expressly subject to full payment of all fees, costs and out-of-pocket expenses due, Elite Media Solutions Ltd grants to The Client the rights in the Final Art as set forth in the proposal Any additional uses not identified herein or reselling of the artwork is not permitted without prior written consent.