

SMEdia Ltd

Marketing Products Terms and Conditions

## 1. Definitions and Interpretation

### 1.1. Definitions:

“Interaction” means a click, view or email made by a an individual to any product purchased

“Contract” means the contract, of which the Order Form forms part, to which these Terms and Conditions apply;

“Customer” means the person or company identified as such on the Order Form.

“Customer Content” means the Customer’s content created or supplied by the Customer for use in any media purchased.

“Order Form” means the paper or online order form which forms part of the Contract or, where there is none, the sales receipt;

“Deposit” means the deposit paid for the Marketing Products as set out in the Order Form, including

any additional top-up payments;

“Email” means an email sent to the Customer as a result of a completed online contact form on SMEdia’s website

“Lead” means any of the following: Call, Click, View, Email;

“Fees” means the set up fees and any service provision fees (including interest) for any media purchased.

“Linked Content” means the content of any website linked to by the Customer Links

“Terms” means these terms and conditions;

“Third Party Provider” means any third party service provider (including but without limitation search engines or telephone directory services) on whose search results the Marketing Products will appear;

“SMEdia” means SMEdia Ltd;

“Marketing Product” means any product or service under-taken by SMEdia in accordance with the completed Order Forms.

“Maps” means the Search Engine Maps indicated on the Order Form

“Directories” means Third Party online Directories

“Social Media” means social networking sites ie Facebook, Twitter

“Terms” means these „Terms and Conditions“

1.2. These Terms govern each agreement entered into between the Customer and SMEdia relating to the supply of any marketing package, this applies whether or not the Order Form or any other document to which the Customer agrees makes reference to these terms.

## 2. Marketing Products & Services

- Based upon the package purchased the following product specific terms and conditions apply

2.1. SMEdia shall develop the Website in accordance with the Customer Content, which shall include (as appropriate): business address (including postcode), business telephone number, link to receive enquiry emails, Facebook and Twitter link (as appropriate), business specific keywords, business

description and images. The Customer shall provide the Customer Content to SMEdia either at the time of the order or within 2 weeks from the date on the Order Form (unless otherwise agreed in writing) and in such format as SMEdia reasonably requires. If SMEdia does not receive the Customer Content within the 2 weeks allowed, then SMEdia will complete the Marketing Products using basic business details and reserves the right to make an additional charge, in accordance with its current rates, for the time spent developing the Customer Content. By completing the Order Form the Customer agrees to be bound by the terms of the Contract. No conditions other than those set out here and in the Order Form shall be binding on SMEdia unless: (i) specifically agreed to in writing by SMEdia and (ii) signed by or on behalf of the Customer and a director of SMEdia. Save in respect of any such exception, in case of any inconsistency between the Order Form and these Terms, these Terms will prevail.

2.2. SMEdia aims to complete the Website within four weeks of receiving the Customer Content (where applicable, depending upon the services purchased).

2.3. SMedia reserves the right at its discretion to submit the Website, or the relevant part thereof, to one or more Third Party Providers, and if it does so, the Customer agrees that SMedia has no control over these search engines and as such cannot guarantee that the submission will be accepted or at what position in the search results the Marketing Products will appear.

2.4. Except as otherwise expressly provided in the Order Form, positioning of the Website is at the sole discretion of SMedia or the Third Party Provider.

2.5. Unless stated on the Order Form, SMedia cannot guarantee any Interactions of a Website, or timescales for delivery with any such performance based service.

2.6. SMedia and any Third Party Provider shall be responsible for the hosting, operation and maintenance of the Website and, although it shall use its reasonable endeavours to keep the Website available on the Internet, SMedia gives no guarantee as to continuing service availability.

2.7. Unless otherwise agreed in writing, any property or material supplied by or on behalf of the Customer in order for SMedia to create the Website will not be returned to the Customer.

2.8. SMEdia may telephone the Customer from time to time and, as with incoming calls to SMEdia, the Customer accepts that all such calls may be recorded for internal purposes, including monitoring and training.

2.9. The Customer accepts that SMEdia cannot ensure that the Website is in all respects visible in all browsers and versions of these browsers. SMEdia shall use its reasonable endeavours to ensure that the Website is visible in the most commonly used version of Internet Explorer.

2.10. The Customer accepts that any Website purchased is subject to editorial review by SMEdia and any Third Party Provider. Notwithstanding this, SMEdia will use reasonable endeavours to fulfil the Customer's requests.

2.11. Information concerning the Customer contained on the Website will be derived from information provided by the Customer and it is therefore the Customer's responsibility to ensure that the information is accurate by checking the Website. The Customer acknowledges and agrees that the information it has submitted to SMEdia shall at all times be accurate, complete and up to date.

SMEdia shall incur no liability for any errors in that information, except those which were introduced by SMEdia and could not reasonably be checked by the Customer. SMEdia reserves the right to edit the content provided by the Customer in order to improve delivery. If SMEdia finds any evidence indicating that the Customer has provided false information in its Website, it reserves the right to cancel the Contract without notice.

2.12. The customer acknowledges and accepts that their services and or products may be reviewed either favourably or unfavourably by third party consumers.

#### Business Video

2.13. Subject to feasibility, and payment of the appropriate fees and charges customers shall be entitled to commission either of two types of Business Video – a Custom Video (60 seconds long) or a Photo Video (30 seconds long) (“the Business Video”). SMEdia shall develop the Business Video in conjunction with a third party production partner (“Video Production Partner” – “VPP”). The VPP will retain creative and editorial control over the Business Video. However, it is the Customer’s

responsibility to provide all information or materials required for production, on time and in the correct format. A failure to do so will be deemed to be the grant of any reasonably necessary discretion by the Customer so as to enable the Business Video to be completed by VPP. SMEdia will accept no liability for, and the Customer will grant SMEdia an indemnity in respect of, any losses arising out of any such failure.

2.14. Following completion, the draft Business Video will be emailed by the VPP to the Customer.

There will then be a five working day review period during which the Customer may request reasonable one-off minor amendments to the Business Video free of charge. Any changes requested thereafter will be subject to additional charges.

2.15. The final Business Video will contain a SMEdia watermark and feature the SMEdia logo at the beginning and end. SMEdia also reserves the right to include a short (no longer than 5 seconds) advertisement pre and post rolling of the Business Video. SMEdia will host and stream the Business Video on its own website and, at its absolute discretion, may licence the same to be displayed on the

website of any other third party provider with which SMEdia has dealings. This Business Video will also be added to a Website created by SMEdia.

2.16. Any Business Videos and all copyright and related intellectual property rights therein (except any underlying copyright or other intellectual property rights, which will have been licensed to SMEdia) will remain the exclusive property of SMEdia. Customers are free to use the Business Videos wherever they wish during the term of the Contract provided that the Business Videos remain in their originally produced format. They may not be re-edited and the SMEdia logo credits may not be removed. Customers have the right to promote their Business Video link (URL) on any marketing materials and, subject to the foregoing, may also display, publish or disseminate the Business Video in any way they see fit.

2.17. Where the Customer grants any licence relating to the Business Video to a third party, it shall be upon the same terms as SMEdia's licence to the Customer and shall, in particular (but without limitation) include provisions that the Business Video shall only be used if the SMEdia logo credits are

included.

2.18. All Business Videos are subject to an annual hosting fee. The hosting fee for the first 12 months is included within the charges for the production of the Business Video.

2.19. Upon expiry or termination of the Customer's Contract with SMEdia, any links to the Business Video under the control of SMEdia will be disabled; the Customer is required to disable any links to the Business Video within its power or control; and any rights relating to the Business Video granted by SMEdia will be withdrawn. In such circumstances, Customers may purchase a licence to use the Business Videos on third party websites for a one off cost, providing that the Business Videos remain in their originally produced format. Under no circumstances may the Business Video be re-edited or the SMEdia logo credits removed.

Maps

2.20. SMEdia endeavours to register and produce/edit Maps as indicated on the order form. These will be produced using the information and materials provided by the client. SMEdia makes no

guarantees to where these maps will appear in rankings on Third Party websites. These will only be produced using the address provided by the client and therefore the client accepts all liability in terms of ensuring the correct information is provided.

If a Third Party removes the account for any reason SMedia holds no liability and the client agrees that no remuneration will be appropriate for this loss of service.

#### Directories

2.21. SMedia will ensure that the customers details provided on the order form are present on key online Directories where the Third Party site allows us to do so. The nature of online Marketing means that the list of Directories used may change and SMedia withholds the right to change this list as it feels appropriate and without notice.

#### Social Media

2.22. SMedia will as indicated in the Order Forms set up and produce/edit Profiles on the relevant Social Media websites. These will be produced with the information and material provided by the

customer and so the customer takes responsibility of ensuring the content provided is suitable, just and honest. SMEdia takes no responsibility for any action by a Third Party site that results in any changes, omissions or removal of the profile and the customer will not seek remuneration for any loss of service. After completion of the profiles SMEdia takes no liability for any third party comments, content, reactions made on the profile. SMEdia is simply providing a platform for the client to use Social Media and therefore is not responsible for the direction in which the client uses the Profile.

### 3. Payment of the Fees

Payment Terms (all products other than Pay-as you-go- products)

3.1. Where the Fees set out on the Order Form include those expressed to be initial set up fees, the Customer shall pay that element of the Fees on entering into the Contract. Where the Fees set out on the Order Form include those expressed to be monthly set up or service provision fees, the Customer shall pay those elements of the Fees monthly in advance by direct debit unless otherwise specifically agreed by SMEdia. In the event that, for whatever reason, SMEdia do not obtain any of the

agreed instalments by direct debit from the Customer when due as herein provided (time being of the essence) SMEDIA can without notice or demand, declare the entire amount due under the terms of the Contract as payable immediately. The Customer hereby agrees and expressly authorises SMEDIA to charge the Customer's credit/debit card with the full amount owed without further recourse to the Customer and where any attempt by SMEDIA to obtain Fees fails for whatever reason, the Customer will incur an administration charge of £50 which shall be payable immediately and in addition to the full amount outstanding.

3.2. All payments made may include value added tax at the prevailing rate.

3.3. SMEDIA reserves the right to increase its service provision fees, on certain market controlled services only, at any time, subject to 30 days notice of such an increase sent electronically to any email address that SMEDIA have for the Customer or by post to the Customer's registered postal address.

3.4. The Customer shall pay all amounts due to SMEDIA in full without any deduction or withholding

and shall not assert any credit or set-off or counterclaim against SMEdia in order to justify the withholding of the whole or part of any such amount. If any Fees become overdue for payment SMEdia may claim interest, (both before and after judgment) at a daily rate of 4% above the Barclays Bank base rate on any outstanding amount until all Fees are received, together with the costs of recovering payment, including any incurred by a debt recovery agent.

3.5. The Customer shall not be entitled to withhold payment, in full or in part for any bookings of Marketing Services accepted by SMEdia, by reason of the fact that SMEdia is prevented from publishing (or continuing to publish) such Marketing Products in whole or in part by any court of competent jurisdiction or does not publish or ceases to publish such Marketing Products in consequence of any actual or threatened legal proceedings or by order or request of any regulatory body or generally recognised industry or internet watchdog organisation or for any other valid reason. The Customer shall immediately on demand reimburse SMEdia with any costs incurred by SMEdia in

connection with such legal or other proceedings.

#### 4. Term, Renewals and Termination

4.1 Subject to the rest of Clause 4, the term of the Contract will be as set out in the Order Form.

4.2. SMEdia Marketing Products are, where appropriate, subject to a minimum contract period which is based on the specific product chosen and is for a length of 12 months.

4.3 This contract is, where appropriate, subject to automatic renewal for the same minimum contract period as set out in the Order Form and the Contract will continue until cancelled in accordance with the terms set out herein or otherwise terminated. If the Customer wishes to terminate the contract at the end of the initial minimum contract period, it shall provide SMEdia with a minimum of 30 days written notice of the same.

4.4. Where SMEdia agrees in the Order Form to deliver a minimum number of Interactions, then if SMEdia delivers 150% or more of its target before the expiry of the initial term of the Contract, SMEdia shall notify the Customer and offer to renew the Contract for a period equal to the initial

minimum contract period running from the day after 150% of Target was reached. The target shall remain unaltered (unless both parties agree new terms) and the provisions set out in the Order Form shall be confirmed in an updated order form setting out the appropriate dates and other information. If, within 14 days of notification, the Customer elects not to renew its contract with SMedia, the Contract shall be terminated, SMedia shall be deemed to have fulfilled its obligations under the Contract and the Customer shall have no accrued rights in that regard. If the Customer accepts the new terms, or fails to respond within 14 days, the Customer will be deemed to have accepted the new terms as set out in the updated order form and a new contract between SMedia and the Customer will have been formed.

4.5. Either SMedia or the Customer may terminate the Contract with immediate effect by giving notice to the other party if that other party is in breach of any of its obligations under this Contract and if, other than when the breach is a failure to pay Fees, where it is capable of remedy, the breach has continued unremedied for a period of seven days after the other party has given written notice to the

defaulting party, specifying the breach and the steps required to remedy it. Without prejudice to 3.1 above in the event of any unremedied breach by the Customer SMEdia can without notice or demand, declare the entire amount due under the terms of the Contract as payable immediately. The Customer hereby agrees and expressly authorises SMEdia to charge the Customer's credit/debit card with the full amount owed without further recourse to the Customer and where any attempt by SMEdia to obtain Fees fails for whatever reason, the Customer will incur an administration charge of £50 which shall be payable immediately and in addition to the full amount outstanding.

4.7. The termination of the Contract (for any reason) shall; (i) be without prejudice to any other rights or remedies which SMEdia may be entitled to under the Contract or at law; (ii) not affect any accrued rights or liabilities which SMEdia may then have; and (iii) not affect the coming into or continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force after such termination.

## 5. Customer Content

5.1. The Customer shall provide the Customer Content to SMedia either at the time of the order, or within 2 weeks of the date on the Order Form by means of an email to [accounts@smediaonline.com](mailto:accounts@smediaonline.com) such other email address as SMedia may elect or by post. SMedia shall use the Customer Content to create the Marketing Products Purchased.

5.2. SMedia reserves the right at any time without notice to remove any Customer Content (or Customer Links) from any Marketing Product if it reasonably believes the Customer Content (or Linked Content) would, or would be likely to, put the Customer in breach of Clause 7 or any other provision of the Contract or would otherwise be detrimental to the interests or goodwill of SMedia.

Any such action shall be without prejudice to SMedia's other rights and remedies. 5.3. Any Customer Content which contains content of an unlawful or otherwise unacceptable nature

(including but not limited to pornography or content depicting violence) may be reported to the appropriate authorities.

## 6. Limitation of Liability

6.1. Except as expressly provided in this Contract, SMedia gives no warranty in relation to the provision of services under this Contract and all warranties, express or implied, are excluded.

6.2. SMedia does not limit or exclude liability for death or personal injury caused by negligence.

6.3. Subject to clause 6.2, SMedia's entire liability to the Customer arising out of or in connection with the Contract, including without limitation breach of contract, misrepresentation (except where fraudulently made) and tort (including negligence), is limited to the amount of the Fees paid by the Customer under the Contract in the preceding 12 months.

6.4. Subject to clause 6.2 and notwithstanding the generality of this clause, SMedia expressly excludes liability for any indirect, special, consequential or economic loss or damage which may arise out of or in relation to the Contract between SMedia and the Customer, whether arising from any failure to publish the Marketing Products or host the Business Video in accordance with the Order Form in a timely manner or at all, or otherwise, and for any loss of profits, revenue, anticipated

savings, business, contracts, production or goodwill even if SMEdia has been advised as to the possibility of such damages.

6.5. In addition, without limiting the foregoing, SMEdia shall not be liable for any loss, damage or delay howsoever arising caused by events which are not reasonably foreseeable or by circumstances outside its reasonable control, including without limitation governmental action, natural disaster, insurrection, riot, explosion, failure of infrastructure or power suppliers, embargo, strikes whether legal or illegal, labour or material shortage, transportation interruption of any kind, work slowdown, the failure of third parties to provide necessary or desirable services or other reasons which result in the prevention or delay of its performance under the Contract. SMEdia shall be excused from such performance to the extent of such prevention or delay.

6.6 Save as specified in this clause, SMEdia shall not be responsible for any error in the placement of, or failure to place, any Marketing Products on SMEdia's website or with any Third Party Provider. If SMEdia fails to publish any Marketing Products or deliver the number of Interactions provided for in

the Order Form or in the event of any other failure, technical or otherwise, of such Marketing Products to appear as provided for in the Order Form, SMedia's liability will be limited (at the option of SMedia) to either: (i) publishing the Marketing Products (or a replacement if provided by the Customer) on positions agreed in the Order Form or as agreed with the Customer as soon as is reasonably practicable in the period following the period during which the Marketing Products was scheduled to run and for such time as is necessary to generate a number of substitute impressions or clickthroughs of equivalent monetary value to the shortfall; or (ii) refunding to the Customer that proportion of the Fees paid which relate to those Marketing Products or Interactions which were not published or delivered or, if the relevant Fees were not paid by the Customer, agreeing that such amounts will not be due or payable or, in the case of a Pay-as-you-go Customer, refunding the balance of the Deposit remaining. SMedia will only provide a refund to the Customer under sub-clause 6.6 (ii) if: (a) the Customer Content arrived within the time limits specified in the Order Form; (b) it complied with SMedia's technical specifications; and (c) changes to the Customer's schedules were notified to

SMEdia within the timeframe set out in the Order Form.

6.7 SMEdia will use reasonable skill and care in performing its duties hereunder but subject thereto:

(i) SMEdia hereby excludes any warranty, express or implied, as to the performance, quality, accuracy or fitness for a particular purpose of SMEdia or of any of the contents of its website; (ii) SMEdia will not be liable for any losses or damages arising (whether in tort (including negligence), contract or otherwise) directly or indirectly as a result of use of the SMEdia website or in connection with Marketing Products on SMEdia's website including without limitation from any technical malfunction, computer error, defect in software, loss of data or other damage or disruption to listings; (iii) SMEdia makes no warranty that the contents of its website or any Product produced are free from infection by viruses, worms or trojans or anything else that has contaminating or destructive properties; and (iv) certain links on SMEdia may lead to resources located on servers maintained by third parties over whom SMEdia has no control and SMEdia accepts no liability arising from access to or use of any material contained on those servers.

6.8. Each of the provisions of this clause 6 is to be construed separately and independently of the others, and if any provision of this clause 6 (or any other clause herein) is found by any court or other judicial body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision will not affect the other provisions of this clause 6 (or any other clause herein) which will remain in full force and effect.

## 7. Licences, Customer Representations and Indemnification

7.1. The Customer warrants and represents that it is the owner of or is licensed to use the entire contents and subject matter contained in its Customer Content, advertising and information, including, without limitation, (i) the names and/or pictures of persons; (ii) any copyright in the material, trademarks, service marks, logos, and/or depictions of trademarked or service marked goods or services, or any other intellectual property rights; and (iii) any testimonials or endorsements contained in any Customer Content submitted to Smart.

7.2. In addition, the Customer warrants and represents to SMedia that:

- (i) It has the right to publish all of the contents of the Customer Content submitted pursuant to the Order Form, and can grant to SMEdia such right, and that such publication will not breach the confidence or rights of privacy of, or, without limitation, infringe the copyright, database rights, trademark rights, patent rights, moral rights or any other intellectual property rights of, any third party.;
- (ii) It has complied with the codes of practice issued by the Committee of Advertising Practice in the UK, including, without limitation, the British Code of Advertising, Sales Promotion and Direct Marketing, and all other relevant codes under the general supervision of the Advertising Standards Authority or any other relevant authority;
- (iii) The Marketing Products either: (a) does not constitute a financial promotion within the meaning of the Financial Services and Markets Act 2000 (“the Act”); or (b) has been approved by an “authorised person” within the meaning of the Act or is otherwise permitted under the Act or another applicable law and the Customer has expressly notified SMEdia in writing of this;
- (v) It does not collect or use personal information through its Marketing Products without permission

from the user and shall at all times comply with the Data Protection Act 1998 (the Customer may not combine, co-mingle, compare or match any information that it legally collects via its Marketing Products with any personal information, click-stream or cookie information that it may have); and

(vi) Where it is required by law that a licence or other express permission is required for it to operate its business and/or to advertise, the Customer is so licensed or permitted and will be throughout the term.

7.3. Further the Customer warrants and represents and undertakes that the Customer Content, and any Linked Content:

(a) will not contain anything that is indecent, obscene or unlawful;

(b) will comply will all applicable law;

(c) will not contain any defamatory, false, misleading or untrue material or material which abuses, harasses, threatens or is otherwise offensive to any other person;

(d) will not restrict or inhibit any other user from using the SMEdia website.

(e) will not contain any virus or other material likely to harm the SMEdia website;

(f) will not contain any material which could potentially harm the reputation of SMEdia.

7.4. The Customer hereby expressly grants to SMEdia:

(i) a non-exclusive, world-wide right to use, reproduce, publicly display, and distribute the Marketing Products in accordance with the Order Form and these Terms and warrants that the Customer has the right to grant such licence;

(ii) the express right to reproduce without limitation, Customer Content, screen shots of the Marketing Products supplied to the Customer by SMEdia, video, review comments, business descriptions and other business information and any content of the Customer's website on or in any promotional or advertising material or campaign promoting or advertising SMEdia.

7.5. In consideration of SMEdia's acceptance of and preparation of such Marketing Products, the Customer agrees to indemnify and hold SMEdia and SMEdia's employees harmless against any and all claims actual or of any kind (including, without limitation, any claim of trademark or copyright

infringement, libel, defamation, breach of confidentiality, breach of any statutory or regulatory duty, false or misleading advertising or breach of any industry advertising codes or sales practices), damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or in connection with:(i) any Customer Content or Linked Content , (ii) SMEdia's proper performance under the Contract, and (iii) the copying, printing, distributing, or publishing of the Marketing Products by SMEdia.

7.6 The Customer represents and warrants that it contracts with SMEdia as principal, and has the authority to do so, notwithstanding that the Customer may be acting as an advertising agency or media buyer or in some other representative capacity. 8. Confidentiality

8.1 The provisions of the Order Form and all communications passing between the Customer or any of its agents and SMEdia are confidential and must not be disclosed to any third party except: (a) by either party to its qualified accountants or legal advisers; or (b) as otherwise agreed by the parties in writing or as otherwise required by law, by any government authority, court order, or other regulatory

body. In addition, in connection with their discussions, the Customer may have received and may in future receive from SMEdia certain valuable technical and non-technical information and materials relating to SMEdia and its business, which is confidential and proprietary to SMEdia. The Customer agrees to preserve the confidentiality of information belonging SMEdia.

8.2 The Customer must not, and must ensure that any agent or person acting on its behalf does not, make any public announcement in respect of the Order Form or the relationship between the parties without the prior written consent of SMEdia including without limitation any pre-announcement in respect of the display of advertising on any SMEdia forum. For the avoidance of doubt, the foregoing prohibition includes public announcements by any third party acting on behalf of the Customer and any communication that the Customer knows will or is likely to be made public.

## 9. Use of Data

The Customer agrees and acknowledges that SMEdia (or representatives or agents of SMEdia) will collect personal data supplied by the Customer, including contact details such as names, addresses,

telephone numbers and e-mail addresses, and that SMEdia may use and retain any personal data supplied by and relating to the Customer for the purposes set out in the Contract. The Customer agrees that SMEdia may use any Customer address or e-mail address for the purpose of contacting the Customer about SMEdia's products and services.

#### 10. Copyright and Intellectual Property

The entire copyright and any other intellectual property rights in the Customer Content (save those licensed to SMEdia) shall remain the exclusive property of the Customer.

#### 11. General

11.1. All notices to be given under the Contract shall be in writing either by email or by first class post to the email or postal address on the Order Form or subsequently notified to the other party. Any notice given which is sent by post shall be deemed to have been received two days after posting.

11.2. This Contract, incorporating the Order Form, these Terms (and any other relevant SMEdia terms), constitutes the entire agreement between the Customer and SMEdia in relation to the

Marketing Products or Business Video. No addition to or modification of this Contract shall be valid unless it is in writing and signed by duly authorised representatives of both the Customer and SMEdia.

11.3. No person has any rights under this Contract save as may be set out in it and the parties agree that the Contracts (Right of Third Parties) Act 1999 is excluded.

11.4 The placing of an Order Form for the insertion of Marketing Products shall amount to an acceptance of these Terms and any conditions stipulated on an Order Form or elsewhere by an agency or a Customer shall be void in so far as they are in conflict with them, unless agreed in writing by SMEdia.

11.5 The Customer may not assign the whole or any part of its rights or obligations under this Contract without the prior written consent of SMEdia. SMEdia may assign or subcontract the whole or any part of its rights or obligations under this Contract without restrictions.

11.6. Nothing in the Contract shall create, or be deemed to create, a partnership or joint venture

between the parties or the relationship of principal and agent between the parties.

11.7 No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, of dealing with, and no partial exercise of any right or remedy hereunder shall constitute a waiver of such or any other right or remedy, or the future exercise thereof.

11.8. This Contract shall be governed by and construed in accordance with English law and the Customer and SMedia submit to the non-exclusive jurisdiction of the English courts.