TERMS AND CONDITIONS

These Terms and Conditions, together with the Client Agreement and the Scope of Works, set out the basis on which we (Gunn Graphics) will provide services to you (the person named as client in the Client Agreement).

1 DEFINITIONS

In addition to the definitions set out in the Client Agreement, the following definitions apply in this Agreement:

1.1 **"Additional Services"** means any additional services agreed between you and us in accordance with clause 3.2.

1.2 **"Client Materials"** means all documents, information, items and materials in any form to be provided by you which are necessary and relevant for the performance of the Services. This includes any items listed in the Scope of Works.

1.3 **"Confidential Information"** means any information relating to your business or our business which is not publicly available including any information specifically designated as confidential; any information supplied by any third party in relation to which a duty of confidentiality is owed or arises; and any other information which should otherwise be reasonably regarded as possessing a quality of confidence or as having commercial value in relation to the business of the party disclosing it.

1.4 **"Deliverables"** means the deliverables specified in the Scope of Works.

1.5 **"Fees"** means the fees described in clause 4 and the Client Agreement/Scope of Works.

1.6 **"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

1.7 **"Scope of Works"** means the Scope of Works or proposal document annexed to this Agreement.

1.8 **"Services"** means the services described in the Client Agreement and the Scope of Works and any Additional Services

2 COMMENCEMENT AND DURATION

2.1 This Agreement will commence on the date stated in the Client Agreement for Google Adwords and Website Maintenance Packages and will continue for the period stated in the Client Agreement (the Initial Period), and thereafter until it is terminated by either party giving no less than 3 months' notice in writing, which may be given at any time after the end of the Initial Period.

3 SERVICES

3.1 We agree to provide the Services on the terms of this Agreement.

3.2 The Services may change from time to time and we will perform any additional services that are agreed by both Parties in writing **("Additional Services").** The fee for any Additional Services will either be agreed at the time the Additional Services are agreed, or will be charged at the rates set out in Scope of Works.

3.3 Time is not of the essence in relation to the performance of the Services or delivery of the Deliverables. We will use our reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are indicative only.

4 FEES

4.1 All design and artwork fees once commissioned are non-refundable and fully chargeable whether or not it is printed or used.

4.2 Design proofs go up to 3rd proofs, any subsequent amends will be chargeable.

4.3 You agree to pay us the Fees for the Services in accordance with the payment terms in the Client Agreement.

4.4 All Fees must be paid in UK Sterling currency or in the event this is not possible, must be converted to UK Sterling value.

4.5 Any monthly Fees will be paid monthly in advance on the date of this Agreement and monthly thereafter, according to the option chosen by you. Any initial set-up Fee shall be paid on the date of this Agreement, or such other date as is agreed between us.

4.6 If we have agreed to incur third party costs on your behalf (for example advertising fees), we will pay the third party costs and invoice you for them.

4.7 All sums due under the Agreement will be paid by you by their due date without any deduction, set-off, counter claim or abatement and time for payment shall be of the essence.

4.8 The Fees do not include VAT or any similar sales tax, import or custom duties which will be paid additionally by you at the then prevailing rate.

4.9 We will review the Services and Fees with you every 12 months.
4.10 Interest will accrue on any amount not paid within 14 days of its due date at the rate of 4% per annum above the Lloyds TSB Bank Plc base lending rate from time to time until payment in full is made.

5 OUR OBLIGATIONS

5.1 We will provide the Services with reasonable skill and care.
5.2 We will use all reasonable endeavours to deliver the Deliverables in accordance with any agreed estimate or timetable. However, time for performance by us will not be of the essence of this Agreement.
5.3 During the performance of the Services, we will give you regular updates in relation to the Services.
5.4 We allow for a 1.2% tolerance for any printed products including: colour, trimming and quantities.

6 YOUR OBLIGATIONS

6.1 You will provide us with Client Materials promptly when requested by us.
6.2 You will provide us with any applicable data protection policy in relation to the Project (whether yours, or of any third party user or beneficiary of the Services).
6.3 All print files submitted to us are at your own risk unless you have selected and paid for our File Check service. Gunn Graphics are not responsible for any print errors caused by the original design set-up if you have not selected our File Check service..
6.4 Once a design proof is 'Approved', any errors found after going to print will be your responsibility.

7 INTELLECTUAL PROPERTY

7.1 All copyright in the Deliverables and any other products of the Services will remain ours.
7.2 Any keywords used within a Google campaign will not be passed over to the client and remain Copyright of Gunn Graphics.
7.3 You grant us a license to use all relevant Client Materials for the purpose of performing the Services.
7.4 You must be the Copyright holder or have Copyright permissions for any materials supplied by you for our use.
7.5 Any design created on your behalf by Gunn Graphics remain Copyright of Gunn Graphics. Files cannot be used and will not be released to other printers, designers, web developers, marketeers without express permission. Should you wish to take these files elsewhere, this is at the discretion of Gunn Graphics and a release fee will be charged.
7.5 Website design and layout remain Copyright of Gunn Graphics. Copyright release and/or website access will only be granted with Gunn Graphics express permission and a Copyright release fee payable - this is a separate charge unrelated to the website creation cost.
7.6 Whilst Gunn Graphics take every endeavour to ensure adequate site security, you the client are solely responsible for any data breach, data loss or fraudulent activity. Gunn Graphics accept no liability once the site is live.

8 WARRANTIES

8.1 We warrant that:
8.1.1 the Deliverables (save to the extent that they incorporate Client Materials) will be wholly original to us and will not infringe the Intellectual Property of any third party;
8.1.2 the Deliverables will not contain any defamatory, blasphemous or racially inflammatory material, or breach any contract or duty of confidence or constitute contempt of court or expose you to any civil or criminal proceedings;
8.2 You warrant that:
8.2.1 The Client Materials will not infringe the Intellectual Property or any other right of any third party and will not contain any defamatory, blasphemous or racially inflammatory material or breach any contract or duty of confidence or constitute contempt of court or expose us to any civil or criminal proceedings.
8.2.2 Any data or other content provided by you to us will be accurate and truthful.
8.3 You acknowledge that the Services may be dependent on factors which are beyond our control and which are dependent on third-party action including, but not limited to, algorithms, actions of competitors and your reputation.
8.4 We do not give any guarantee as to the success of any marketing activity performed in relation to the Project or as to any levels of increased revenue, sales leads or other measurables and further do not guarantee that the provision of the Services by us will achieve any predicted or desired sales results all of which will remain at your own risk.

9 OUR LIABILITY TO YOU

9.1 Your contract is solely with Gunn Graphics, which has sole legal liability for the services performed pursuant to this Agreement and for any act or omission in the course of that work. No representative, director, officer, employee, agent or consultant of Gunn Graphics will have any personal legal liability for any loss or claim.

9.2 Unless explicitly agreed otherwise in writing we do not owe, nor do we accept, any duty to any person other than you.

9.3 Our maximum liability to you in relation to any single matter or any group of connected matters which may be aggregated by our insurers will be £5M including interest.

9.4 We will not be liable for any of the following (whether direct or indirect):
9.4.1 losses not caused by any breach of contract or tort on our part;
9.4.2 loss of revenue;
9.4.3 loss of profit;
9.4.4 loss of or corruption to data;
9.4.5 loss of use;
9.4.6 loss of production;
9.4.7 loss of contract;
9.4.8 loss of opportunity;
9.4.9 loss of savings, discount or rebate (whether actual or anticipated); and
9.4.10 harm to reputation or loss of goodwill.

9.5 We will not be liable for any loss, damages, claims or proceedings incurred by you as a result of any breach of clause 8.2;

9.6 Regardless of the limitations above, nothing in this Agreement will be construed as excluding or restricting any Party's liability for death and/or personal injury caused by its, its employees' or its agents' negligence, or for any fraud.

10 SUSPENSION

10.1 We have the right to suspend this Agreement if any Fee or any other sum due under this agreement or any other agreement between us, has not been paid in full by its due date.

11 TERMINATION

11.1 Either party may terminate this Agreement by giving written notice if:
11.1.1 The other party is in breach of this Agreement and does not rectify that breach within 10 days of receipt of a notice informing them of such breach;
11.1.2 The other party is in material breach of this Agreement which is not capable of remedy. For the avoidance of doubt, the failure to meet any performance targets set by you will not be a material breach of the Agreement;
11.1.3 The other party goes into administration, liquidation, insolvency or any order is made for their dissolution or winding up.

11.2 On termination or fulfilment of this Agreement you will pay us any sums due within 14 days of the date of termination.

12 FORCE MAJEURE

12.1 Neither you nor we will be liable to each other for any failure to perform our obligations under this Agreement which is due to a so-called act of God, accident, fire, lockout, strike or other official labour dispute, union problem, riot or civil commotion, satellite failure, failure of technical facilities not within the reasonable control of the defaulting party, act of public enemy, enactment, rule or order or act of government (whether local or national), or other act or event of a similar or dissimilar nature beyond the reasonable control of that party, such act or event being deemed an event of force majeure.

12.2 In the event that any force majeure event continues for a period of 60 days or for a period aggregating no less than 60 days in a calendar year, the Parties will consult and seek to agree on the best course of action.

13 CONFIDENTIALITY

13.1 Each Party undertakes that it will at all times keep confidential the terms and contents of this Agreement.

13.2 Each Party agrees that it will not at any time disclose to any person any Confidential Information except as permitted by Clause 13.3:

13.3 Each Party may disclose the other party's confidential information:
13.3.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement Each party will ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's Confidential Information comply with this Clause 13.3.1; and

13.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
13.3.3 Neither party will use the other Party's Confidential Information for any purpose other than to perform its obligations under the Agreement.

13.4 Upon termination of this Agreement both parties will deliver to the other party all working papers or other material and copies provided to it pursuant to this Agreement or prepared by it either in pursuance of this Agreement or previously.

13.5 The obligations of each Party under this clause 13, will continue in effect for 3 years after the termination of this Agreement.

14 DATA PROTECTION

14.1 In accordance with Data Protection Act 2018, you consent to us processing any personal or sensitive data that may be obtained for the purposes of providing the Services. This consent is to include processing, transfer and disclosure of such personal and sensitive data internally and externally (including outside the UK or the European Economic Area), to the extent that this is necessary in order for us to fulfil our obligations to you under this Agreement and/or in order for us to provide the Services.

15 NOTICES

15.1 Any notices served in accordance with this Agreement must be in writing and sent by post or email to the addresses set out at the top of this Agreement.

16 AUTHORITY

16.1 Each Party warrants and represents to the others with respect to itself that it has the full right, power and authority to execute, deliver and perform this Agreement and that the person or firm signing this Agreement on its behalf has full authority to do so.

17 SUBCONTRACTING

17.1 We may sub-contract or delegate any or all of our obligations under this agreement. We acknowledge that any act or omission of our sub-contractor in relation to our obligations under this agreement shall be deemed to be an act or omission of us.

18 ENTIRE AGREEMENT

18.1 This Agreement sets out the entire understanding and agreement between the Parties in relation to the subject matter of this Agreement. Each Party acknowledges that it has not entered into this Agreement in reliance on any representation or warranty made by or on behalf of any other party unless expressly set out in this Agreement.

19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

19.1 No other person who is not a party to this Agreement will have any rights, whether under the Contract (Rights of Third Parties) Act 1999 or otherwise, to enforce any terms of this Agreement.

20 GOVERNING LAW AND JURISDICTION

20.1 This Agreement is governed by, and is to be construed in accordance with, English law.

20.2 Any dispute arising out of or in connection with this Agreement will be subject to the exclusive jurisdiction of the English courts, and the Parties submit to the exclusive jurisdiction of the English courts for these purposes.