

# SHAKE CREATIVE LTD

## TERMS & CONDITIONS (Applicable from 1<sup>st</sup> September 2014)

These terms & conditions constitute a valid and binding agreement between Shake (hereinafter referred to as “Shake”) and you, the client, for any services provided or work ordered. By asking us to participate in any form of work for you, or on your behalf, you are agreeing to these Terms and Conditions.

### 1. DEFINITIONS

As used herein and throughout this Agreement.

#### 1.1

**Agreement** means the entire content of this Terms and Conditions document, and our Proposal documents including Estimates, Quotations and/or Schedules.

#### 1.2

**Client Content** means all materials, information, imagery, copy 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 documents to be delivered by Shake to The Client, in the form and media specified in the Proposal documents.

#### 1.5

**The Client** means the company or individual who has agreed to take out work with or commissioned work from Shake.

#### 1.6

**Final Artwork** means all creative content developed or created, or commissioned, by Shake, 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, typographic treatments and text, modifications to The Client Content, and Shake’s selection, arrangement and coordination of such elements together with The Client Content and/or Third Party Materials. With all printing there may be some colour variations from screen proof to final print or from previous printed work. This is due to

the nature of CMYK printing. If accurate colour reproduction is imperative, the Pantone Colour System should be utilised.

1.7

**Final Deliverables** means the final versions of Deliverables provided by Shake and accepted by The Client.

1.8

**Preliminary Artwork** means all artwork including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by Shake and which may or may not be shown and or delivered to The Client for consideration but do not form part of the Final Artwork.

1.9

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

1.10

**Services** means all services and the work product to be provided to The Client by Shake as described and otherwise further defined in the Proposal documentation.

1.11

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

1.12

**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 documents shall be effective for 30 days after presentation to The Client. In the event that the Proposal is not formally accepted by The Client within the time identified, the Proposal, together with any quotations, estimates, 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 Shake, The Client shall pay to Shake fees in the amounts and in the manner according to the Proposal documentation.

### 3.2

**Additional Costs.** Any and all outside costs including, but not limited to, image production, stock imagery, copywriting, proofreading, equipment rental, artwork licenses, prototype and/ or proof production costs, hosting fees, will be billed to The Client unless specifically otherwise provided for in the Proposal documentation. Such outside costs may be subject to a mark up.

### 3.3

#### **Invoices.**

3.3.1 All invoices are payable within 30 days of the date of invoice.

3.3.2 All commissioned work exceeding £500 will be subject to a deposit of 50%. Shake Creative Limited reserve the right to change this percentage at will.

3.3.3 Shake Creative reserve the right to place The Client's account on hold if payment for overdue accounts is not received within 45 days of original invoice date.

3.3.4 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 at 8% above the Bank of England base rate on the overdue balance. 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. For all accounts overdue beyond 45 days of the original invoice date, Shake Creative Ltd reserve the right to apply a fixed £40 admin charge to cover the time incurred for debt recovery.

3.3.5 Shake 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 conditional 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.

3.3.6 Shake Creative reserve the right to invoice The Client for work completed over any period of 30 days following the previous invoice or deposit raised.

3.3.7 Shake Creative reserve the right to charge an additional debt recovery fee for any invoices still not cleared beyond 90 days of original issue date unless otherwise agreed. These fees are allocated as follows: Up to £999.99 - £50, £1,000 to £9,999.99 - £100 and £10,000 or more - £150. Fees will be automatically added to the first statement following the completion of the 90 days showing on account.

### 3.4

**Project End.** All deliverables shall be deemed complete once The Client has signed off the work or indicated satisfaction in writing, via e-mail, post or other methods. If The Client fails to communicate with Shake for a period of more than 20 days without explanation, the project shall be deemed satisfactory and complete and invoicing of said work will be commence.

## 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 Shake's standard hourly rate as prevailing from time to time. Such charges shall be in addition to all other amounts payable under the Proposal documentation, despite any maximum budget, contract price or final price identified therein. Shake may extend or modify any delivery schedule or deadlines in the Proposal and Deliverables as may be required by such Changes.

### 4.2

**Timing.** Shake will prioritise performance of the Services as may be necessary or as identified in the Proposal documentation, and will undertake commercially reasonable efforts to perform the Services within the time(s) identified in the Proposal documentation. 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 Shake. Shake shall be entitled to request written clarification of any concern, objection or correction. The Client acknowledges and agrees that Shake'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 documentation 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 shall not constitute a breach of any term, condition or of Shake's obligations under this Agreement.

## 5. THE CLIENT'S 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 Shake; (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 documentation; (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. CREDITATION/PROMOTIONS

Shake retains the right to reproduce, publish and display the deliverables in Shake's portfolio(s) and website(s), 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 website and in other promotional materials, and, if not expressly objected to, include a link to the other party's website.

## 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. 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 documentation 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.** Shake is an independent contractor, not an employee of The Client or any company affiliated with The Client. Shake shall provide the Services under the general direction of The Client, but Shake shall determine, in Shake's 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 authorized to act as agent or bind the other party except as expressly stated in this Agreement. Shake and the work product or Deliverables prepared by Shake 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

**Design Agents.** Shake shall be permitted to engage and/or use third parties or other

service providers as independent contractors in connection with the Services (Design Agents). Notwithstanding, Shake shall remain fully responsible for such Design Agents' compliance with the various terms and conditions of this Agreement.

### 8.3

**No Solicitation.** During the term of this Agreement, and for a period of six (6) months after expiration or termination of this Agreement, The Client agrees not to solicit, recruit, engage, or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire, or any other kind of basis, any Shake employee or Design Agent of Shake, whether or not said person has been assigned to perform tasks under this Agreement. In the event such employment, consultation or work-for-hire event occurs, The Client agrees that Shake shall be entitled to an agency commission to be the greater of either (a) 25% of said person's starting salary with The Client, or (b) 25% of fees paid to said person if engaged by The Client as an independent contractor. In the event of (a) above, payment of the commission will be due within 30 days of the employment starting date. In the event of (b) above, payment will be due at the end of each and any month during which the independent contractor performed services for The Client. Shake, in the event of non-payment and in connection with this section, shall be entitled to seek all remedies under law and equity.

### 8.4

**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 Shake, and Shake shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Shake.

## 9. WARRANTIES AND REPRESENTATIONS

### 9.1

The Client represents, warrants and covenants to Shake that (a) The Client owns all rights, titles, and interest in, or otherwise has full right and authority to permit the use of The Client Content, (b) to the best of The Client's knowledge, The Client Content does not infringe the rights of any third party, and use of 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 Shake's knowledge, the Final Artwork provided by Shake and Shake's 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 Shake shall be void. The Client agrees to fully indemnify and hold Shake 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 Shake on behalf of The Client, will remain the property of Shake and/or Shake's suppliers unless otherwise explicitly stated.

## **10. INDEMNIFICATION/LIABILITY**

### **10.1**

**By The Client.** The Client agrees to indemnify, save and hold harmless Shake 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, provided that (a) under such circumstances Shake shall promptly notify The Client in writing of any claim or suit; (b) The Client has sole control of the defence and all related settlement negotiations; and (c) Shake 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 Shake in providing such assistance.

### **10.2**

**By Shake.** Subject to the terms, conditions, express representations and warranties provided in this Agreement, Shake 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 Shake'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 Shake in writing of the claim; (b) Shake shall have sole control of the defence and all related settlement negotiations; and (c) The Client shall provide Shake with the assistance, information and authority necessary to perform Shake's obligations under this section. Notwithstanding the foregoing, Shake 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 Shake.

### **10.3**

**Limitation of Liability.** The services and the work product of Shake are sold as is. In no event shall Shake 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 Shake, even if Shake has been advised of the possibility of such damages.

## 11. RIGHTS TO DELIVERABLES OTHER THAN FINAL ARTWORK

### 11.1

**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 Shake a nonexclusive, non-transferable licence to use, reproduce, modify, display and publish The Client Content solely in connection with Shake's performance of the Services and limited promotional uses of the Deliverables as authorised in this Agreement.

### 11.2

**Third Party Materials.** All Third Party Materials are the exclusive property of their respective owners. Shake shall inform The Client of all Third Party Materials that may be required to perform the Services or otherwise integrated into the Final Artwork. Under such circumstances Shake shall inform The Client of any need to license, at The Client's expense, and unless otherwise provided for by The Client, Shake shall obtain the licence(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 licences or instructs the use of third party art, The Client hereby indemnifies, saves and holds harmless Shake 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 Artwork.

### 11.3

**Preliminary Works.** Shake retains all rights in and to all Preliminary Works. The Client shall return all Preliminary Works to Shake within thirty (30) days of completion of the Services and all rights in and to any Preliminary Works shall remain the exclusive property of Shake.

### 11.4

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

### 11.5

**Trademarks.** Upon completion of the Services and expressly conditioned upon full payment of all fees, costs and out-of pocket expenses due, Shake assigns to The Client



all ownership rights, including any copyrights, in and to any artworks or designs comprising the works created by Shake for use by The Client as a Trademark. Shake 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 do not otherwise infringe the rights of any third party. The Client hereby indemnifies, saves and holds harmless Shake 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.

#### 11.6

**Applications for Products and Services.** All products and services are subject to availability and we give no guarantee in this regard. The provision of details of products and services on our website or on promotional display in our offices are not, and should not be construed as, an offer to sell or buy such products or services by the relevant company.

### **12. RIGHTS TO FINAL ARTWORK**

#### 12.1

Upon completion of the Services, and expressly subject to full payment of all fees, costs and out-of-pocket expenses due, Shake grants to The Client the rights in the Final Artwork as set forth in the proposal. Any unused concepts developed during creative stages remain the property of Shake Creative Limited and therefore may be utilised by Shake Creative Limited in future work, though so as not to infringe on any direct copyright material produced for previous clientele. Any additional uses not identified herein or reselling of the artwork is not permitted without prior written consent.

### **13. WEBSITE SPECIFICS**

#### **13.1 Search Engine Performance, SEO and Digital Marketing**

13.1.1 When undertaking a new contract, Shake will code The Client's site to be as search engine friendly as the project dictates is reasonable and achievable. If The Client wishes to take out an ongoing Search Engine Optimisation contract, this will take the form of a separate agreement to the website contract. In the absence of a Search Engine Optimisation contract, Shake is not responsible for ongoing site promotion.

13.1.2 The Client will implement or otherwise act upon the recommendations Shake make during the provision of the Services. In the event that The Client does not implement recommendations within 14 days of being advised to do so, The Client acknowledges that this may affect the performance of The Client's campaign for which Shake shall not be held responsible.

13.1.3 If a written contract is entered into by Shake and The Client for the provision of SEO or Digital Marketing, this contract will specify the exact services to be provided, in exchange for a charge calculated at a daily rate. Shake's rates are not dependent upon nor linked to site traffic, rankings in search engines or any other performance metrics or data supplied by third party companies.

13.1.4 All information pertinent to a Search Optimisation campaign shall be supplied to Shake, including history of any prior campaigns conducted with other Search Optimisation providers.

13.1.5 Shake shall not be responsible for URLs dropped or excluded by a search engine for any reason.

### **13.2 FTP Access**

Shake may require the ability to directly optimise and amend the structure of The Client's website. In the event that Shake consider this necessary, The Client shall provide Shake with access to The Client's website which may include an FTP (File Transfer Protocol) username and password and access to The Client's content management system or control panel. In such an event, Shake shall keep secure any access details to The Client's website which The Client provides to Shake. Should The Client not provide such access within 7 days of Shake's request, The Client itself shall be responsible for implementing Shake's recommendations and suggestions in accordance with clause

### **13.3 Websites, Digital Media, Database Application and Ecommerce Development**

13.3.1 Shake cannot take responsibility for any losses incurred by the use of any software created for The Client. Whilst every care is taken to ensure products are problem free and accurate, the ultimate responsibility lies with The Client to ensure that all software is functioning correctly before and during use.

13.3.2 Where applications or sites are developed on servers not recommended by Shake, The Client is expected to provide or seek any information, additional software, support or co-operation pertaining to the server required in order for the application to be correctly developed. Where large applications are to be developed on servers not recommended by Shake, it is The Client's responsibility to provide a suitable testing environment which is identical to the final production environment.

13.3.3 The Client is expected to test fully any application or programming relating to a website developed by Shake before it is made generally available for use. Where "bugs", errors or other issues are found after the site/development is live, or after an agreed period of testing for the work being delivered, Shake will endeavour (but is not obliged) to correct these issues to meet the standards of function outlined in the original brief. Any "bug", error or other issue found after 6 or more months following delivery of any application or programming cannot be considered for correction without additional charge, where not covered by a support or maintenance contract, due to changes in technology and the passing of a reasonable amount of time for testing and response.

13.3.4 Delivery deadlines are given as a guideline only and although Shake will endeavour to meet all its quoted deadlines, Shake cannot be held responsible if a delivery date is not met.

13.3.5 Shake will provide the amount of training deemed necessary for the successful handover of the deliverables at Shake's discretion. Typically this will entail a single session of training for no more than 1.5 hours with The Client. If more training is required then this must be communicated to Shake at the point of handover, and Shake may at Shake's discretion provide further training but Shake reserve the right to charge for further training on an hourly basis if there is no support and maintenance contract in place.

13.3.6 If the Client reasonably believes that the product or service supplied by Shake does not match the agreed specification in the original quotation or working document supplied by Shake at the point of sign-off on the planning stage, whichever is more recent in the project delivery, then the Client must notify Shake within a period of 10 working days following the date of delivery. Shake will then respond and endeavour to carry out the required change within a further 10 working days where possible and where the request is reasonable. If no contact is made before 10 working days following delivery then the Client will be deemed to have accepted the service as delivered.

13.3.7 The Client accepts that there is a risk with any system using credit card or personal data and Shake will take every reasonable action to ensure the security of this data in line with current industry practice or specific instruction from The Client. However, Shake cannot be held responsible for any breach of data security.

13.3.8 Shake cannot be held responsible for fixing issues caused by third party tools or Apps such as Twitter, Google Maps, or payment gateways. If changes to their application are required due to external factors, then these changes will always be chargeable unless covered by a support and maintenance contract and it is The Client's responsibility to ensure these are updated when no contract is in place.

## **13.4 Web and Email Hosting**

Web and Email Hosting is covered by a separate document.

## **13.5 Loss of Service and Data**

13.5.1 Shake will endeavour to maintain network stability and satisfactory service levels, however Shake may from time to time perform routine maintenance, service and upgrades. Shake will endeavour to act on such instances at the most convenient times and provide reasonable notice by any means Shake deems satisfactory.

13.5.2 Shake may experience outages beyond Shake's control caused by any of the following; force majeure (any 'act of god' including those induced by negative human activities), war, invasion, act of hostilities, civil war, rebellion, military power or confiscation, terrorist activities, nationalism, governmental/quasigovernmental sanction, restraint, embargo, prohibition or intervention, blockage, labour dispute,

general strike, lockout or failure of utilities (electricity, telephone, etc), failure of hardware (Shake's hardware as well as third party's), failure of software, failed software or hardware upgrade or any other failure as caused by Shake, Shake's suppliers or any third party.

13.5.3 Shake may at Shake's discretion provide notification of outages whether planned or unplanned.

13.5.4 The Client releases Shake from any claim or potential claim with relation to outages and any loss of business/service suffered by The Client or any third party.

13.5.5 Shake may at its own discretion take backups of data for The Client, however The Client accepts sole responsibility for the back-up and integrity of The Client's data, including but not limited to website files and database content, unless specifically agreed and detailed in a separate support or maintenance contract.

### **13.6 Support & Maintenance**

13.6.1 Websites will be handed over as a fully functioning, completed work. Unless a support contract has been arranged, Shake is not responsible for support. Support can be provided upon request for an agreed fee.

13.6.2 Websites are offered as a single contract and no guarantee of the availability or compatibility (including rendering compatibility with future browsers or future versions of existing browsers) from Shake is offered unless an ongoing support package has been agreed.

### **13.7 Copyright of Materials Provided**

13.7.1 The copyright in any methodologies and technologies provided by Shake for the Project shall remain with Shake or its licensors.

13.7.2 Shake agrees to grant The Client, a royalty-free, worldwide, non-exclusive licence to use and modify any methodologies and technologies provided by Shake in its standard terms.

13.7.3 Shake waives any moral rights as defined in sections 77 to 83 of The Copyright, Designs and Patents Act 1988 subsisting in any copyright created for The Client under this Agreement.

13.7.4 Nothing in this Agreement shall be taken to prevent Shake from using any expertise acquired or developed during the performance of this Agreement in the provision of services for other companies or on its own behalf.

### **13.8 Population of Content**

Unless specifically detailed in either the quotation for work, or the technical specification document for a project, Shake Creative are not responsible for full content population of a website or digital media provided. Once a website or digital media

project has been completed and delivered to The Client with enough content to enable testing of all sections and training, then any further population is the responsibility of The Client.

### **13.9 Service performance**

The Client must inform Shake in advance of any changes to (or in respect of) The Client's website that may affect the provision or the performance of the Services. The Client acknowledges that The Client is solely responsible if any such changes affect the provision or performance of the Services and The Client shall not be entitled to any refund or credit against fees in this event.

### **13.10 Service guarantees**

The Client acknowledges that the provision of Shake's web services are not subject to any performance guarantees or promises, including but not limited to the ranking of The Client's website on internet search engines or the volume of searches, visitors, click-throughs or incremental revenue.

## **14. TERMINATION**

### **14.1**

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

### **14.2**

This Agreement may be terminated at any time by either party effective immediately upon notice if the other 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.

### **14.3**

In the event of termination, Shake shall be compensated for the Services performed through to 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 Shake or Shake's agents as of the date of termination, whichever is greater; and The Client shall pay all Expenses, fees, out of pocket expenses together with any Additional Costs incurred through and up to, the date of cancellation.

### **14.4**

In the event of termination by The Client and upon full payment of compensation as provided herein, Shake grants to The Client such right and title as provided for in this Agreement with respect to those Deliverables provided to, and accepted by The Client

as of the date of termination.

#### 14.5

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.

#### 14.6

Projects that have passed 20 days without contact or further instruction from The Client shall be deemed to have been completed and are subject to invoicing in full at Shake's discretion.

### 15. GENERAL

#### 15.1

**Modification/Waiver.** This Agreement may only be modified with the express permission of both parties and any modification of this Agreement must be in writing, except that Shake'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.

#### 15.2

**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 addresses identified on the Proposal document, 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.

#### 15.3

**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.

#### 15.4

**Force Majeure.** Shake shall not be deemed in breach of this Agreement if Shake 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 Shake or any local, state, federal, national or international law, governmental order or regulation or

any other event beyond Shake's control (collectively, Force Majeure Event). Upon occurrence of any Force Majeure Event, Shake 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.

#### 15.5

**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 from the other party. 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 defenses available to them and further consent to service of process by mail. The Client acknowledges that Shake 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 Shake 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.

#### 15.6

**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.

#### 15.7

**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.