



TERMS AND CONDITIONS

These are the terms and conditions (**Terms**) on which Altitude Design Ltd (**Altitude**) will provide website and graphic design, marketing, and video production services (**Services**) to **you** (the **Client**). Our **contact details** for written correspondence is Altitude Design Ltd, Mount Wise House, Discovery Road, Plymouth, Devon, England, PL1 4QU; or call us on +44 (0)1752 973199; or email hello@designbyaltitude.com.

By using our Services, you agree to comply with and be bound by these Terms, which includes any policies referred to within and the Project Proposal where applicable. All policies are available from <https://www.designbyaltitude.com/> or hard copies can be obtained by contacting us on the above contact details.

1. DEFINITIONS

1.1. The following definitions shall apply to these Terms:

Client Content:	means all materials, writing, images or other creative content provided by Client and to be used in preparing or creating the Deliverables.
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Commencement Date:	shall have the meaning set out in clause 3.2.
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Completion Date:	The date on which the Final Deliverables are delivered to the Client as set out in the Project Proposal.
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Deliverables:	means the material output of the Services as specified in the Project Proposal to be delivered by Altitude to Client at each Milestone and subject always to the licence set out in clause 17.
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Developer Tools:	means all design tools developed and/or used by Altitude in performing the Services, including 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 website design, architecture, layout, navigational and functional elements.
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Final Deliverables:	means the final version of the Deliverables provided by Altitude and accepted by Client.
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Milestone(s):	shall have the meaning set out in clause 2.2
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Project Proposal:	means the agreed schedule of work to be completed by the Altitude (as agreed by Client) and shall set out the costs, timescale and scope of work (including any
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Milestones).

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

- 1.2. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.3. Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4. A reference to writing or written includes email.
- 1.5. A reference to the singular shall include the plural.

2. SERVICES

- 2.1. Altitude shall supply the Services to the Client in accordance with the Project Proposal in all material respects.
- 2.2. Altitude shall use all reasonable endeavours to meet any performance dates specified in Project Proposal (**Milestones**), but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 2.3. Altitude reserves the right to amend the Project Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Altitude shall notify the Client in any such event.
- 2.4. Altitude warrants to the Client that the Services will be provided using reasonable care and skill and the Client warrants that the engagement of Altitude to provide the Services is in the course of a business.

3. PROPOSAL

- 3.1. Altitude shall provide a consultation to the Client to assess the needs of the Client's business and as soon as reasonably practicable after such consultation Altitude shall provide to the Client the Project Proposal.
- 3.2. The Client must accept the Project Proposal in writing to Altitude within 20 days. The date on which the Client provides written acceptance shall be the commencement date of the contract between the parties (**Commencement Date**). The client accepts that on the Commencement Date it shall be bound by these Terms until the termination of the contract in accordance with clause 16. If the Project Proposal expires pursuant to this clause 3.2, Altitude may modify the Project Proposal and resubmit it to the Client.

4. COMPENSATION

- 4.1. Fees. Client agrees to pay Altitude the fees listed in the Project Proposal, including all taxes
- 4.2. Additional Costs. Pricing in the Project Proposal includes only Altitude fees. Any other costs, such as hosting, art licensing or photography, will be invoiced to the Client separately and may be subject to other terms and conditions where applicable.
- 4.3. Hosting Final Deliverables. Altitude will host the Deliverables on its own web space while the project is under construction. If the Final Deliverables are not delivered by the Completion Date, and the delay is outside of Altitude's reasonable control, the Client

shall indemnify Altitude for the costs of hosting the Deliverables from the Completion Date until the date the Final Deliverables are accepted by the Client.

5. PAYMENT

- 5.1. Payment Schedule. Payment is due when Altitude completes each Milestone and the Client accepts the Deliverables for that milestone.
- 5.2. Invoices. All invoices are payable within 30 days of receipt. Invoices shall list any expenses and additional costs as separate items.
- 5.3. Late Fee. A monthly service fee of 1.5 percent, or the maximum allowed by law, is payable on all overdue balances.
- 5.4. Crediting Late Payments. Payments will be credited to late payments first, then to unpaid balances.
- 5.5. Collection Expenses. Client shall pay all collection or legal fees caused by late payments.
- 5.6. Withholding Delivery. Altitude may withhold delivery and transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full.
- 5.7. Withholding License. All grants of any license to use or transfer ownership of any intellectual property rights under these Terms are conditioned on full payment, including all outstanding additional costs, expenses, fees, or any other charges where applicable.

6. CHANGES TO PROJECT SCOPE

- 6.1. Change Request. If Client wants to change the Project Proposal after the Commencement Date, Client shall send Altitude in writing the requested changes in detail (**Change Order**). Within 7 days of receiving a Change Order, Altitude will respond with a statement proposing Altitudes availability, additional fees, changes to delivery dates, and any modification to these Terms.
- 6.2. Major Change. If Client requests are at or near 50% percent of the time required to produce the Deliverables, or the value of the Project Proposal, Altitude shall be entitled to submit a new and separate Project Proposal to Client for written approval. Altitude shall not begin work on the revised Services until the Client has provided written acceptance of the revised Project Proposal.
- 6.3. Minor Change If Client requests are not Major Changes, Client will be invoiced on a time and materials basis at Altitudes standard rate as notified to the client from time to time and subject always to these Terms. Such charges shall be in addition to all other amounts payable under the Project Proposal, despite any maximum budget, contract price or final price identified. Altitude may extend or modify any Milestones as may be required by such changes.
- 6.4. Acceptance/Rejection. Client will have 20 days to respond in writing accepting or rejecting the new proposal. If Client rejects the proposal, Altitude will not be obligated to perform any services beyond those in the original agreement.

7. DELAYS

- 7.1. Altitude Delays. Altitude shall use all reasonable efforts to meet the Milestones set out in the Project Proposal. Altitude may extend the due date for any Deliverable by giving written notice to Client. The total of all extensions shall not exceed 60 days.
- 7.2. Client Delays. Client shall use all reasonable efforts to provide needed information, materials and approvals. Any delay by Client will result in a day-for-day extension of the due date for all Deliverables.

- 7.3. General Delays.** Any delay caused by conditions beyond the reasonable control of the parties shall not be considered a breach and will result in a day-for-day extension of any performance due. Each party shall use reasonable efforts to notify the other party, in writing, of a delay. Conditions beyond the reasonable control of the parties include, but are not limited to, natural disasters, acts of government after the date of agreement, power failure, fire, flood, acts of God, labour disputes, riots, acts of war, terrorism and epidemics.

8. EVALUATION AND ACCEPTANCE

- 8.1. Testing.** Altitude will test and correct Deliverables using commercially reasonable efforts before providing Deliverables to Client.
- 8.2. Approval Periods.** Client shall, within 20 business days after receiving each Deliverable, notify Altitude in writing of any failure to comply with the specification of the Project Proposal or of any other objections, corrections or changes required. Altitude shall, within 20 business days of receiving Client's notification, correct and submit a revised Deliverable to Client. Client shall, within 10 business days of receiving a revised Deliverable, either approve the corrected version or make further changes.
- 8.3.** If after 30 corrections by Altitude, Client finds the Deliverables are not acceptable, Client may terminate these Terms in accordance with clause 16.
- 8.4.** If Client fails to provide approval or comments during any approval period, those Deliverables will be considered approved and accepted. All objections, corrections and changes shall be subject to these Terms.

9. CLIENT RESPONSIBILITIES

- 9.1.** Client acknowledges that it is responsible for performing the following in a reasonable and timely manner: (a) Provide Client Content in a form suitable for use in the Deliverables without further preparation by Altitude, unless otherwise specified in the Project Proposal; (b) Proofread all Deliverables. Client will be charged for correcting errors after the acceptance of any Deliverable; (c) Make decisions regarding other parties.

10. ACCREDITATION AND PROMOTION

- 10.1. Accreditation** Altitude shall be entitled to place accreditation, as a hyperlink or otherwise, in the form, size and location as incorporated by Altitude in the Deliverables on each page of the Final Deliverables.
- 10.2. Promotion.** Altitude retains the right to reproduce, publish and display the Deliverables in Altitude's portfolios and websites, 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.
- 10.3. Promotional Approval.** Either party, subject to the other's approval (such approval not to be unreasonably withheld), may describe its role in the Project on its website and in other promotional and marketing materials, and, if not expressly objected to, include a link to the other party's website.

11. PERSONAL DATA AND PRIVACY

- 11.1.** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 11.2.** The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and Altitude is the processor. Altitude's privacy policy sets out the scope, nature and purpose of processing by Altitude, the duration of the processing and

the types of personal data and categories of data subject in relation to the Services. The Client agrees and acknowledges that the processing of Personal Data by Altitude in accordance with Altitude's privacy policy shall form the written instruction required under the Data Protection Legislation and the Client hereby warrants to notify Altitude to any change to such processing by Altitude.

11.3. Without prejudice to the generality of clause 11.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Altitude for the duration and purposes of these Terms.

11.4. Without prejudice to the generality of clause 11.1, Altitude shall, in relation to any personal data processed in connection with the performance by Altitude of its obligations under these Terms:

- a) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- b) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- c) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - i. the Client or Altitude has provided appropriate safeguards in relation to the transfer;
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. Altitude complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and]
 - iv. Altitude complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
- d) assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- e) notify the Client without undue delay on becoming aware of a personal data breach;
- f) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by Applicable Data Processing Law to store the personal data; and

- g) maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and immediately inform the Client if, in the opinion of Altitude, an instruction infringes the Data Protection Legislation.

- 11.5. The Client consents to Altitude appointing a third party processor of Personal Data under these Terms as may be required to provide the Services from time to time. Altitude confirms that it will enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 12. As between the Client and Altitude, Altitude shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 11.
- 11.6. Either party may, at any time on not less than 30 days' notice, revise this clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment/amendment to these Terms).

12. CONFIDENTIAL INFORMATION

- 12.1. Client's "**Confidential Information**" includes information that Altitude should reasonably believe to be confidential. Altitude's "Confidential Information" includes the source code of any Developer Tools. All material considered confidential by either party shall be designated as confidential. Confidential Information shall not be disclosed to third parties and shall only be used as required by these Terms.
- 12.2. Confidential Information shall not include any information that is already known by the Client, becomes publicly known through no fault of the Client, or is received from a third party without a restriction on disclosure.

13. RELATIONSHIP OF THE PARTIES

- 13.1. Independent Contractor. Altitude is an independent contractor. Altitude shall determine, in its sole discretion, the manner and means by which the Services are accomplished. No agency, partnership, joint venture, or employee-employer relationship is intended or created by these Terms. Neither party is authorized to act as agent or bind the other party except as expressly stated in these Terms. Altitude and the work product or Deliverables prepared by Altitude shall not be deemed a work for hire as defined under Copyright Law. All rights granted to Client are contractual in nature and are expressly defined by these Terms.
- 13.2. Design Agents. Altitude shall be allowed to use third parties as independent contractors in connection with the Services ("Design Agents"). Altitude shall remain fully responsible for Design Agents' compliance with these Terms.
- 13.3. No Exclusivity. These Terms do not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by Altitude, and Altitude shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Altitude.

14. REPRESENTATIONS AND WARRANTIES

- 14.1. By Client. Client represents and warrants to Altitude that: (a) To the best of Client's knowledge, use of the Client Content does not infringe the rights of any third party; (b) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials; (c) Client will obtain all necessary and appropriate rights and licenses to grant license to Altitude to use Third Party Materials.
- 14.2. By Altitude: Altitude represents and warranty to Client that: (a) Altitude will provide the Services identified in the Agreement in a professional and workmanlike manner; (b) Altitude shall secure all necessary rights, title, and interest in and to the Final Deliverables, including Developer Tools, sufficient for Altitude to grant the intellectual

property rights provided in these Terms; (c) To the best of Altitude's knowledge, the Deliverables will not violate the rights of any third parties; (d) If Client or third parties modify the Deliverables or use the Deliverables outside of the scope or purpose of these Terms, all representations and warranties of Altitude shall be void.

- 14.3.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THESE TERMS, ALTITUDE MAKES NO WARRANTIES WHATSOEVER. ALTITUDE EXPLICITLY DISCLAIMS ANY OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR COMPLIANCE WITH LAWS OR GOVERNMENT RULES OR REGULATIONS APPLICABLE TO THE PROJECT.

15. INDEMNIFICATION AND LIABILITY

- 15.1.** By Client. Altitude shall promptly notify Client in writing of any third party claim or suit. Client shall have the right to fully control the defence and any settlement of such claim or suit.
- 15.2.** By Altitude. In the case of a third party claim or proceeding based on a claim that the Deliverables breach a third party's intellectual property rights, and it is determined that such infringement has occurred, Altitude may at its own expense, replace any infringing content with non-infringing content.
- 15.3.** Limitation of Liability. THE SERVICES AND THE WORK PRODUCT OF ALTITUDE ARE SOLD "AS IS." IN ALL CIRCUMSTANCES, THE MAXIMUM LIABILITY OF ALTITUDE, ITS DIRECTORS, OFFICERS, EMPLOYEES, DESIGN AGENTS AND AFFILIATES ("ALTITUDE PARTIES"), TO CLIENT FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND CLIENT'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO THE NET PROFIT OF ALTITUDE. IN NO EVENT SHALL ALTITUDE 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 ALTITUDE, EVEN IF ALTITUDE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

16. TERMINATION

- 16.1.** Termination for Cause. Either party may terminate these Terms at any time, on 30 days prior written notice if the other party breaches any of its material responsibilities or obligations under these Terms and fails to cure that breach during that 30 day period.
- 16.2.** Termination for Insolvency. Either party may terminate these Terms at any time, on written notice to the other party, if the other party ceases to conduct business in its normal course; makes an assignment for the benefit of creditors; is liquidated or otherwise dissolved; becomes insolvent; files a petition in bankruptcy; or a receiver, trustee, or custodian is appointed for it.
- 16.3.** Termination by Mutual Agreement. These Terms maybe terminated by the mutual agreement of the parties.
- 16.4.** Termination Fees. In the event of termination, Client shall pay Altitude for the Services performed through the date of termination in the amount of a prorated portion of the fees due. Client shall pay all expenses, fees, and additional costs incurred through the date of termination.

16.5. Intellectual Property. If Client terminates and on full payment of compensation, Altitude grants Client right and title as provided by these Terms with respect to those Deliverables provided and accepted by Client as of the date of termination.

16.6. Confidential Information. On expiration or termination of these Terms: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) all rights and obligations regarding Confidential Information shall survive.

17. RIGHTS TO FINAL ART

17.1. License. Altitude grants to Client an exclusive, perpetual and worldwide license to use and display the Final Deliverables in accordance with these Terms.

17.2. Liquidation for unlicensed use. Additional use of any Deliverables by Client outside the scope of the license granted above requires additional fees. Altitude shall be entitled to further compensation equal to 50% percent of the total original fees paid for the Services unless otherwise agreed in writing by both parties. In the event of non-payment, Altitude shall be entitled to pursue all remedies under law and equity.

18. RIGHTS TO DELIVERABLES OTHER THAN FINAL ART

18.1. Client Content. Client Content is the exclusive property of the Client. Client grants Altitude a non-exclusive, non-transferable license to use, reproduce, modify, display and publish the Client Content solely in connection with Altitude's performance of the Services and limited promotional uses of the Deliverables as authorised in these Terms.

18.2. Preliminary Works. Altitude retains all rights in and to all preliminary works. Client shall return all preliminary works to Altitude within thirty (30) days of the Completion Date.

19. SUPPORT SERVICES

19.1. Warranty Period. Altitude shall provide support services at no additional cost to the Client to fix any bugs or issues with the Final Deliverables for one (1) calendar month from the Completion Date (or acceptance by the Client of the Final Deliverables in the event of a delay).

19.2. Further Development. After the Warranty Period expires and at Client's option, Altitude will provide support services at Altitude's hourly standard rate as notified to the Client from time to time or on a fixed job basis.

19.3. No Enhancements. The support services in the Warranty Period do not include enhancements to the Final Deliverables outside of the scope of the Project Proposal.

20. ENHANCEMENTS

20.1. During the Maintenance Period (to be determined in the Project Proposal), Client may request that Altitude develop enhancements to the Deliverables. Altitude shall exercise commercially reasonable efforts to prioritize Altitude's resources to create such enhancements. Client understands Altitude may have pre-existing obligations that may delay requested enhancements. Altitude shall provide any enhancements on a time and materials basis at Altitudes standard rate as notified to the Client from to time.

20.2. Alterations. Alteration of any Deliverable is prohibited without the express permission of Altitude. Altitude will be given the first opportunity to make the required alterations. Unauthorised alterations shall constitute additional use and will be invoiced accordingly.

21. DISPUTE RESOLUTION

21.1. Negotiation. Parties agree to attempt to resolve any dispute by negotiation between the parties.

- 21.2. Arbitration/Mediation:** If parties are unable to resolve the dispute by negotiation, either party may start mediation and/or binding arbitration in a forum mutually agreed to by the parties.
- 21.3. Litigation:** In all other circumstances, the parties specifically consent to the courts in England and Wales to be the applicable jurisdiction in accordance with clause 30 and clause 29. The parties waive any jurisdictional or venue defences available to them and further consent to service of process by mail.
- 21.4. Legal Fees:** The prevailing party shall be entitled to recover its legal fees and costs in any dispute resolved by binding arbitration or litigation.

22. FORCE MAJEURE

Altitude shall have no liability to you under these Terms if we are prevented from or delayed in providing the Services, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, provided that we have notified you of such an event and its expected duration.

23. WAIVER

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

24. SEVERANCE

- 24.1.** If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms.
- 24.2.** If any provision or part-provision of these Terms is deemed deleted under clause 24.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

25. ENTIRE AGREEMENT

These Terms constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

26. ASSIGNMENT

- 26.1.** the Client shall not, without Altitude's prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.
- 26.2.** We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under these Terms.

27. NO PARTNERSHIP OR AGENCY

Nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

28. THIRD PARTY RIGHTS

These Terms does not confer any rights on any person or party (other than the parties to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

29. GOVERNING LAW

These Terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

30. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).