





**SMART DIGITAL ONLINE LTD trading as SMART TRAFFIC [www.smart-traffic.co.uk](http://www.smart-traffic.co.uk)  
TERMS AND CONDITIONS**

This document, the order form, the payment schedule and all other documentation provided by Smart Traffic clearly identify and state the terms and conditions on which Smart Digital Online Ltd supply any of the SEO services to their clients or resellers in their current product portfolio, whether the products are listed on the website [www.smart-traffic.co.uk](http://www.smart-traffic.co.uk) or not.

Clients should understand that by signing an order form and ordering any one of the Smart Traffic products or services, they agree to be bound by these terms and conditions, for that reason, please read this document carefully before confirming your order and request confirmation on any questions that you have prior to your order being signed. Smart Traffic recommends that you print a copy of these terms and conditions for your future reference.

You confirm that you accept these terms and conditions by signing the order form provided by your Smart Traffic Account Manager and returning it by either email to [sales@smart-traffic.co.uk](mailto:sales@smart-traffic.co.uk) or by faxing it to 0870 298 9551 or by posting it to:

Smart Digital Online Ltd  
Unit 9a  
Great Western Railway Yard  
St Agnes  
Cornwall  
TR5 0PD

Please understand that if you refuse to accept these terms and conditions, and a compromise cannot be successfully agreed between our legal representatives then Smart Traffic reserve the right to not accept an order from you.

[www.smart-traffic.co.uk](http://www.smart-traffic.co.uk) is a website operated by Smart Digital Online Ltd (company no. 06055984 VAT number. 902333466) (**We, Us or Smart Traffic**) of Unit 9A, Great Western Railway Yard, St Agnes, Truro, TR5 0PD.

**1. Interpretation and Definitions**

1.1 In this agreement the following terms shall have the respective meanings assigned to them:

"**Agreement**" means these terms and conditions, the payment terms, the order form, the reseller agreement and the NDA. In the event of any conflict between the terms of this agreement, the details of the order form shall prevail, except for payment terms where the payment schedule shall prevail;

"**The customer**" means the company its employees, agents, representatives and sub contractors, to whom the product or service is provided as set out on the order form;

"**Commencement Date**" means the date of commencement of the Services as set out on the order form;

"**Fees**" means the amounts payable by the Customer for the Services provided by Smart Traffic as set out in the Order Form;

"**Force Majeure**" means any act, event, omission or accident beyond reasonable control including but not limited to Acts of God, fire, lightning, explosion, flood, extreme weather conditions, outbreak of hostilities



(whether war be declared or not), riot, civil disorder or commotion, acts of terrorism, industrial disputes or acts or defaults of any local or central Government or other competent authority;

**"Initial Term"** unless otherwise stated on the Order Form [one] year from the Commencement Date

**"Order Form"** means the customers agreed schedule for the provision of Services forming part of these terms and conditions;

**"Payment Schedule"** means the agreed schedule of payments that the customer shall make to Smart Traffic for the Services forming part of these terms and conditions;

The **"product or service"** means the services to be provided by Smart Traffic as specified in the order form;

1.2 The headings do not affect the interpretation of the Agreement.

1.3 Any reference to a party's employees includes its agents and sub-contractors.

## 2. Application of the Terms

2.1 These terms and conditions shall apply to and be incorporated in the Agreement.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Agreement shall be binding without exception, unless agreement in writing and signed by a duly authorised representative of Smart Traffic.

2.3 If the customer wishes to vary any part of the Agreement, the request shall be sent in writing to Smart Traffic Ltd prior to the order form being signed. Smart Traffic shall respond to the customer within 5 working days as to whether it is prepared to agree to the change and, if so, details of the cost of the change, any effect on any other part of the Agreement including any change in timescales. The Customer may accept such proposal within such time as Smart Traffic may specify or, if none, within 7 days, failing which it shall be deemed rejected. Pending acceptance or rejection Smart Traffic may continue to perform the Agreement without reference to the request.

## 3. Contractual terms

3.1 Any quotation is valid for a period of 7 days only, unless otherwise specified, and Smart Traffic may withdraw any part of a quote, at any time by notifying the customer. Any quotation is given on the basis that no contract shall come into existence until we receive an acknowledgement of order in accordance with clause 3.2

3.2 Each order or acceptance of a quotation for products or services by the customer shall be deemed to be an offer by the customer subject to these conditions. The customer shall ensure that its order is complete and accurate.

3.3 No order for products and services placed by the customer shall be deemed to be accepted by Smart Traffic until a written acknowledgement and payment (including email) is received by Smart Traffic, or, if earlier, when Smart Traffic begins to provide the products and services to the customer.

3.4 No agreement may be cancelled by the customer, except with the prior agreement in writing of Smart Traffic and provided that the customer indemnifies Smart Traffic in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Smart Traffic as a result of the cancellation.

3.5 Smart Traffic's employees are not authorised to make any contractually binding representations concerning the Services. In entering into the Agreement, the customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Smart Traffic.

3.6 Contract Cancellation – With the consent of a Smart Traffic Director, contracts may be cancelled with 60 days prior written notice being sent by the customer and received by Smart Traffic. Upon cancellation 50% of the remaining contract balance will be payable by the customer.

3.7 Any services provided and already delivered as part of a contract bonus or services that were agreed to be provided at a discount due to the client commitment to a contract term, will be invoiced at the full rate card amount if the contract term is not completed in full. The difference between the rate the client paid and the full rate card amount will be invoiced by Smart Traffic and difference payable by the customer.

#### **4. Customer's obligations**

4.1 The customer will provide Smart Traffic with reasonable direct and remote access to its website, and shall provide such other reasonable assistance as Smart Traffic may request, including, but not limited to, providing source code and other statistical, diagnostic information and other relevant information required to enable Smart Traffic to comply with its obligations under this Agreement.

4.2 The customer shall comply with directions and advice from Smart Traffic within a reasonable period.

4.3 The customer shall not interfere or disrupt the Service.

#### **5. Implementation of Service**

5.1. In consideration of the payment by the customer of the fees in accordance with clause 11, Smart Traffic shall provide the products and services during the continuance of this Agreement.

5.2. Smart Traffic shall be permitted to subcontract or outsource any of the products and services or obligations under this Agreement.

5.3. Smart Traffic will use reasonable efforts to provide customers with the products and services in accordance with the estimated timeline set out in the order form.

5.4. Where the product or service being provided requires, Smart Traffic will liaise with the relevant web agency, hosting company or other third party in order to provide the product or services. Smart Traffic shall not be liable for any act or omission by the relevant web agency, hosting company or other third party, if such act or omission results in Smart Traffic breaching its obligations under this Agreement.

5.5. Smart Traffic will not make changes to or update a customer's website prior to written or verbal consent from the customer, stating that Smart Traffic have the right to make the agreed changes and the Customer, as the website owner, agrees to and takes full responsibility for those changes being made.

#### **6. Top Ten Google Guarantee (excluding pay on results 50/50 campaigns)**

6.1 This clause shall only apply if the Top Ten Google Guarantee (TTGG) service is specified on the order form and there are no fee payments outstanding.

6.2 Smart Traffic may refund or provide services in lieu for [the amount determined by the Directors of Smart Traffic OR amount specified on the order form OR 50% of the fees in the 6 month period] if:

I. The customer's website is not listed on the first page of non sponsored listings in a the specified Google search for the key words agreed in the Order Form ("**Keywords**"), within 6 months from the completion date of the agreed link building campaign to fulfil this guarantee;

II. Google do not change their search engine algorithms within the 6 month period;

III. The customer has not and is not in breach of any term or condition of this Agreement;

IV. The customer has not removed any of the Services, changed Keywords, changed domains, interfered with the link building or not complied with the request and advice of Smart Traffic;

V. The customer has not acted in a way that the Director's of Smart Traffic consider, at their sole discretion, is detrimental to achieving the first page listing;

VI. The customer has not interfered with or impaired the Service;

VII. The customer's website has been available for more than 99% of the 6 month period;

VIII. The customer has not breached any national or international law; and

IX. There are no other factors outside of the control of Smart Traffic that have prevented or inhibited its ability to provide the TTGG service.

6.3 The Guarantee will be deemed fulfilled by Smart Traffic when a minimum of one keyword agreed in the campaign reaches a minimum of position 10 in the non sponsored listings for the specified Google search engine, where it is not specified the default will be: [www.google.co.uk](http://www.google.co.uk) (pages from the UK)

6.4 This Guarantee applies to Google UK searches and no other search engines.

**7. Link Building conditions and product specifications:**

7.1 If stated on the order form Smart Traffic shall provide the link building services as specified on the website [www.smart-traffic.co.uk](http://www.smart-traffic.co.uk).

7.2 The number of links stated in the Order Form is the number of links that Smart Traffic will provide on the link building report. The number is correct at the point at which the report is generated and quality controlled, whereupon it will be emailed to the customer.

7.3 Smart Traffic offer no guarantee for the length of time each link will remain live after the point at which it has been confirmed and reported on the customer link report or unless otherwise specified.

7.4 Theme links - These links can be related to the content and theme of your own website giving them far higher authority and a higher ranking.

7.5 Editorial Links - A unique, optimized 250 word article will be written themed around the clients industry. Within this copy a link will be placed pointing back at the client's website. There will be a maximum of 5 outbound links on the page

7.6 Exclusive Review Links - A unique, optimized 500 word review article based on the clients Industry will be written. Within this copy a link will be placed pointing back at the client's website and will be the only outbound link on the page

7.7 Multi-link reviews - An original, highly themed 1000 word article/webpage with up to 5 exclusive editorial links pointing at 5 different deep-link URLs on the same or multiple domains

**8. Themed Link, Editorial Links, Review Links, Multi-Link Review, Guarantee:**

8.1 Guarantee applies to live contract clients and resellers only – this means that clients that are still in a contract with Smart Traffic and continue to work and spend with Smart Traffic get a 1 year guarantee for each of their links. Resellers who buy links only get a 1 year guarantee for their links.

**9. Exclusions from products and services.**

9.1 Smart Traffic shall be under no obligation to provide products and services in respect of:

- I. problems resulting from any modifications or customisation of the domain;
- II. Links that are removed by third parties;
- III. Any domains other than those specified on the order form;

9.2 The Services do not include:

- I. The cost of any third party software upgrades or web development which Smart Traffic advises are required;
- II. Any website, hosting or other technical support;

**10. Top 10 guarantee for link building only customers**

10.1 Smart Traffic does not guarantee results for link building only clients under any circumstances.

**11. Contract Term**

The Services shall commence on the Commencement Date and shall remain in force from year to year thereafter, unless and until terminated by either party giving 60 days notice expiring at any time after the end of the Initial Term or otherwise in accordance with clause 3.6 and any other clause stated in this contract

**12. Payment**

12.1 The customer shall pay the fees without set-off, deduction or delay, monthly in advance in the manner specified in the payment schedule. All prices are exclusive of VAT and any other relevant taxes. No products or services shall be provided until payment has been received by Smart Traffic, unless Director Approval has been obtained. Smart Traffic shall be entitled at any time, and from time to time, to increase the fees to accord with any change in Smart Traffic's standard scale of charges by giving to the customer not less than [90] days' prior written notice.

12.2 If Smart Traffic provides any services not included within the Services at the request of the customer then Smart Traffic shall charge for the same at its then current price and the customer shall pay any invoice raised in respect of the same within 30 days.

12.3 The date for payment of Smart Traffic's invoices shall be of the essence of the Agreement.

12.4 If the customer fails to make payment in full on the due date, the whole of the balance of the fees then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Smart Traffic, all guarantees are null and voided and Smart Traffic may:

I. appropriate any payment made by the customer to any outstanding sum;

II. Charge interest on the amount outstanding from the due date to the date of receipt by Smart Traffic (whether or not after judgment), at the annual rate of 4% above the then current base lending rate of Barclays Bank plc, accruing daily and compounded quarterly; and

III. Suspend all further delivery of Services until payment has been received in full.

12.5 The Fees are not refundable, except where otherwise stated herein.

12.6 Cheques and direct debits returned unpaid by the customer's bank and credit card payments returned unpaid will incur an administration charge which under all circumstances shall be paid by the customer.

### **13. 50/50 Campaigns (pay on results)**

13.1 The Customer shall pay the 50% of the contract value in advance of any work starting by Smart Traffic.

13.2 FULL SETTLEMENT without exception for all outstanding fees will be paid within 7 working days of Smart Traffic issuing a report in which the agreed keyword (s) are confirmed to be on page one of the specified Google or by default, [www.google.co.uk](http://www.google.co.uk) (pages from the UK)

13.3 If payment is not received following 7 working days of the invoice being sent, Smart Traffic will charge interest on the amount outstanding from the due date to the date of receipt by Smart Traffic (whether or not after judgment), at the annual rate of 4% above the then current base lending rate of Barclays Bank plc, accruing daily and compounded quarterly;

13.4 The final 50% fees are payable regardless of the results if:

I. a customer changes the website or in any way hinders the progress of the website. If the customer has removed any of the products or services, changed keywords, changed domains, interfered with the link building or not complied with the request and advice of Smart Traffic;

II. The customer has acted in a way that the Director's of Smart Traffic consider, at their sole discretion, is detrimental to achieving the first page listing;

III. The customer has interfered with or impaired the product or service;

IV. The customer's website has not been available for more than 99% of the 6 month period;

V. The customer has breached any national or international law; and

VI. There are other factors outside of the control of Smart Traffic that have prevented or inhibited its ability to provide the first page results.

13.5 Failure to pay the amount owed will result in legal action being taken by Smart Traffic.

### **14. Termination or suspension of service**

14.1 Smart Traffic may, at its sole discretion, suspend the services or terminate this Agreement if the customer:

I. fails to pay any sum due under this Agreement and such sum remains unpaid for 14 days after written notice from Smart Traffic that such sum has not been paid;

II. ceases to carry on business or become insolvent, or have an administrator or receiver appointed or enter into liquidation or enter into any agreement with its creditors; or

III. fails to fulfil any of its obligations under any part of this or any other agreement that it has with Smart Traffic; or

IV. interferes with or impairs the products or service, or Smart Traffic's ability to deliver the products or services.

14.2 Termination of the Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

#### **15. Dispute Resolution Procedure**

15.1 If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet promptly or arrange a teleconference in good faith to resolve the dispute.

15.2 If the dispute is not resolved in accordance with conditions set, then Smart Traffic will refer the dispute, to be appointed, in default of agreement, on the request of either party to the English Courts. In any claim Smart Traffic will submit a claim for interest in accordance with section 13.3 and all legal costs associated to the claim against the customer will be paid by the customer without exception.

#### **16. Data Protection Act**

16.1 If any Personal Data (as defined by the Data Protection Act 1998) is passed to Smart Traffic under this Agreement then the parties agree that the customer is the Data Controller and that Smart Traffic is the Data Processor.

16.2 The customer warrants that it complies with the Data Protection Act 1998

16.3 Smart Traffic shall:

- I. process the Personal Data only in accordance with instructions from customer;
- II. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the services or as is required by Law or any Regulatory Body;
- III. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure; and
- IV. take reasonable steps to ensure the reliability and confidentiality of any of Smart Traffic's personnel who have access to the Personal Data.

#### **17. Limitation of liability**

17.1 The following provisions set out the entire liability of Smart Traffic (including any liability for the acts or omissions of its employees) to the customer in respect of any breach of the Agreement and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Agreement.

17.2 All warranties, conditions and other terms implied by statute or common law are excluded from the contract to the fullest extent permitted by law.

17.3 Nothing in these conditions excludes or limits the liability of Smart Traffic for death or personal injury caused by Smart Traffic's negligence or fraud or fraudulent misrepresentation. Subject to:

- I. Smart Traffic shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and
- II. Smart Traffic's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to 100% of the total fees received by Smart Traffic in the calendar year in which the incident occurs.

17.4 The provisions of this Clause 15 shall continue to apply notwithstanding the termination or expiry of this Agreement.

17.5 Smart Traffic will not be liable for any links being removed by a third party or any penalties incurred by customers.

#### **18. Confidentiality (NDA)**

18.1 Save as provided in this Agreement each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been

disclosed by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Agreement and shall ensure that such employees are subject to corresponding obligations of confidentiality.

18.2 All materials, drawings, specifications and data supplied by Smart Traffic to the customer shall at all times be, and remain, the exclusive property of Smart Traffic, but shall be held by the customer in safe custody at its own risk until returned to Smart Traffic, and shall not be disposed of or used other than in accordance with Smart Traffic's written instructions or authorisation.

18.3 This condition shall survive termination of the Agreement, however caused.

18.4 Points agreed via a separate 'Non Disclosure agreement' are agreed in addition to this agreement, not in replace of this agreement.

### **19. Non-Solicitation**

19.1 Neither party shall, during the continuance of the Agreement, or within 6 months of its termination, whether on behalf of itself or via a third party, solicit or seek to entice away any employee of the other. In the event of breach of this clause the party in default shall pay the other a sum equal to six months gross pay of the employee concerned being a pre-estimate of the cost of recruitment and training a replacement.

### **20. Force Majeure**

20.1 Smart Traffic shall not be liable to the customer for any breach of its obligations under this the Agreement if such breach is due to or substantially contributed to a Force Majeure event.

20.2 If a Force Majeure event occurs, Smart Traffic shall inform the customer as soon as possible and take all reasonable steps to mitigate the effects of the Force Majeure event and resume performance

### **21. Waiver**

21.1 A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

### **22 Entire Agreement**

22.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

22.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

22.3 In the event of any part of this Agreement being held inapplicable or unreasonable, the remainder of the Agreement shall remain in full force and any clause held inapplicable or unreasonable shall be enforced to the fullest extent possible.

### **23. Assignment**

23.1 The customer shall not, without the prior written consent of Smart Traffic, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

23.2 Smart Traffic may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

### **24. Third party rights**

24.1 The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

24.2 The Client shall indemnify Smart Traffic against all claims, costs and expenses which Smart Traffic may incur and which arise, directly or indirectly, from the Client's breach of any of its obligations under this Agreement, including any claims brought against Smart Traffic alleging that any services provided by Smart

Traffic in accordance with the Service Specification infringes a patent, copyright or trade secret or other similar right of a third party.

## **25. Notices**

25.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall be sent by email or delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or, in each case, such other address as may be notified by one party to the other.

25.2 A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An e-mail shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no "non deliverable" notices is received by the sender.

## **26. Governing law and jurisdiction**

26.1 The Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

## **27. Partners including resellers and referrers**

27.1. All partners agree to this agreement as well as the relevant partner agreements.

27.2 Partners or Agents do not represent, are not authorised to sign anything on behalf of or agree terms on behalf of, contract for or agree either verbally or in writing any for Smart Traffic.

27.3 If a customer is refunded in part or in full for fees paid for products and services from Smart Traffic then any commissions paid due to that contract will be clawed back from the partner or agent without discretion.

## **28. Changes to this Agreement**

28.1. Smart Traffic may modify this Agreement where it is required to do so, by notifying the customer in writing and giving 30 days notice where possible. This would include where changes to the law, rules applied by other authorities which require Smart Traffic to modify its procedures, policies or services.

28.2. Smart Traffic may at any time modify this Agreement for new customers by publishing a new agreement on its website.



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TERMS AND CONDITIONS**

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You confirm that you accept these terms and conditions by either making a payment for any one of the Smart Digital Online Ltd or trading as companies, products and services and/or by signing the order form provided by your Account Manager and returning it by either email or by fax to 0870 298 9551 or by posting it to:

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[www.smart-site-online.com](http://www.smart-site-online.com) is a website operated by Smart Digital Online Ltd (company no. 06055984 VAT no. 902333466) (**We, Us or Smart Site**) of Unit 9A, Great Western Railway Yard, St Agnes, Truro, TR5 0PD.

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3.3 No order for products and services placed by the customer shall be deemed to be accepted by Smart Site until a written acknowledgement and payment (including email) is received by Smart Sites, or, if earlier, when Smart Site begins to provide the products and services to the customer.

3.4 No agreement may be cancelled by the customer, except with the prior agreement in writing of Smart Site and provided that the customer indemnifies Smart Site in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Smart Site as a result of the cancellation.

3.5 Smart Site’s employees are not authorised to make any contractually binding representations concerning the Services. In entering into the Agreement, the customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Smart Site.

3.6 Contract Cancellation – With the consent of a Smart Site Director, 12 month contracts may be allowed to be cancelled with 60 days prior written notice being sent by the customer and received by Smart Site. Upon cancellation 50% of the remaining contract balance will be payable by the customer. PLEASE note: Ecommerce builds and Web site design contracts will not be allowed to be cancelled under any circumstances, only products relating to 12 month terms will be considered to be allowed to be cancelled.

3.7 Any services provided and already delivered as part of a contract bonus or services that were agreed to be provided at a discount due to the client commitment to a contract term, will be invoiced at the full rate card amount if the contract term is not completed in full. The difference between the rate the client paid and the full rate card amount will be invoiced by Smart Site and difference payable by the customer.

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5.4. Where the product or service being provided requires, Smart Site will liaise with the relevant web agency, hosting company or other third party in order to provide the product or services. Smart Site shall not be liable for any act or omission by the relevant web agency, hosting company or other third party, if such act or omission results in Smart Site breaching its obligations under this agreement.

5.5. Smart Site will not make changes to or update a customer's website prior to written or verbal consent from the customer, stating that Smart Site have the right to make the agreed changes and the Customer, as the website owner, agrees to and takes full responsibility for those changes being made.

#### **6. Services**

6.1 You will contract directly for hosting with a hosting company, this means that Smart Site is not responsible for any down time or hosting issues regarding your website and therefore if there is an issue you should contact your hosting company directly.

6.2 After signing off and so agreeing your Website build is complete and live, the responsibility for managing the websites is the responsibility of the customer; if you purchase an ongoing support contract, in addition to your website build contract, then this agreement will be held on its own merit.

6.3 Smart Site offers no guarantee for the business generated by your new site.

6.4 Payment gateways such as Paypal and such are not the responsibility of smart site – we simply integrate into them as needed.

6.5 Any loss of ranking by the new site when a smart site build is launched is not the responsibility of smart site although best endeavours will be adhered to to ensure minimum disruption, rankings on search engines and other factors outside the control of Smart Site will be down to the website owner and other parties they contract with for such rankings including the search engine themselves.

6.6 Training will be provided as agreed in the contract. If it is not stated as being part of the contract and you need to order a training pack, then your account manager will provide you with a quote for training. A basic standard training document will be sent to you on request.

## **7 Exclusions from products and services**

7.1 When Smart Site is required to integrate with third party software Smart Site are in no way responsible for the 3<sup>rd</sup> party service level.

7.2 Bespoke website builds are signed off as agreed plans before the work begins. Any subsequent changes thereafter that diversify from the plan are chargeable and quoted for on an individual basis prior to that change being agreed as part of the contract between the parties.

## **8. Contract Term**

8.1 The Services shall commence on the commencement Date and shall remain in force from year to year thereafter, unless and until terminated by either party giving 60 days notice expiring at any time after the end of the initial term or otherwise in accordance with clause 3.6 and any other clause stated in this contract

## **9. Payment**

9.1 The customer shall pay the fees without set-off, deduction or delay, monthly in advance in the manner specified in the payment schedule. All prices are exclusive of VAT. No products or services shall be provided until payment has been received by Smart Site, unless Director Approval has been obtained. Smart Site shall be entitled at any time, and from time to time, to increase the fees to accord with any change in Smart Site's standard scale of charges by giving to the customer not less than [90] days' prior written notice.

9.2 If Smart Site provides any services not included within the Services at the request of the customer then Smart Site shall charge for the same at its then current price and the customer shall pay any invoice raised in respect of the same within 30 days.

9.3 The date for payment of Smart Site's invoices shall be of the essence of the Agreement.

9.4 If the customer fails to make payment in full on the due date, the whole of the balance of the fees then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Smart Site, all guarantees are null and voided and Smart Site may:

I. appropriate any payment made by the customer to any outstanding sum;

II. Charge interest on the amount outstanding from the due date to the date of receipt by Smart Site (whether or not after judgment), at the annual rate of 4% above the then current base lending rate of Barclays Bank plc, accruing daily and compounded quarterly; and

III. Suspend all further delivery of services until payment has been received in full.

9.5 The Fees are not refundable, except where otherwise stated herein.

9.6 Cheques and direct debits returned unpaid by the customer's bank and credit card payments returned unpaid will incur an administration charge which under all circumstances shall be paid by the customer.

9.7 All legal fees incurred by Smart Site related to collecting late payments will be add to the invoice and charged accordingly to the customer without exception

9.8 If payments are delayed during the signing off process, then Smart Site will not launch the website as live, until the payment is made.

9.9 If payments are overdue on existing websites for upgrades and any other bespoke or standard work then Smart Site reserve the right to to take the action required to collect the debt before the work is implemented.

## **10. Termination or suspension of service**

10.1 Smart Site may, at its sole discretion, suspend the services or terminate this Agreement if the customer;

I. Fails to pay any sum due under this agreement and such sum remains unpaid for 14 days after written notice from Smart Site that such sum has not been paid;

II. Ceases to carry on business or become insolvent, or have an administrator or receiver appointed or enters into liquidation or enter into any agreement with its creditors; or

III. Failed to fulfil any of its obligations under any part of this or any other agreement that it has with Smart Site; or

IV. Interferes with or impairs the products or service, or Smart Site's ability to deliver the products or services.

10.2 Termination of the Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

#### **11. Dispute Resolution Procedure**

11.1 If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet promptly or arrange a teleconference in good faith to resolve the dispute.

11.2 If the dispute is not resolved in accordance with conditions set, then Smart Site will refer the dispute, to be appointed, in default of agreement, on the request of either party to the English Courts. In any claim Smart Site will submit a claim for interest in accordance with section and all legal costs associated to the claim against the customer.

#### **12. Data Protection Act**

12.1 If any Personal Data (as defined by the Data Protection Act 1998) is passed to Smart Site under this Agreement then the parties agree that the customer is the Data Controller and that Smart Site is the Data Processor.

12.2 The customer warrants that it complies with the Data Protection Act 1998

12.3 Smart Site shall:

- I. process the Personal Data only in accordance with instructions from customer;
- II. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the services or as is required by Law or any Regulatory Body;
- III. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure; and
- IV. take reasonable steps to ensure the reliability and confidentiality of any of Smart Site's personnel who have access to the Personal Data.

#### **13. Limitation of liability**

13.1 The following provisions set out the entire liability of Smart Site (including any liability for the acts or omissions of its employees) to the customer in respect of any breach of the Agreement and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Agreement.

13.2 All warranties, conditions and other terms implied by statute or common law are excluded from the contract to the fullest extent permitted by law.

13.3 Nothing in these conditions excludes or limits the liability of Smart Site for death or personal injury caused by Smart Site's negligence or fraud or fraudulent misrepresentation. Subject to:

- I. Smart Site shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and
- II. Smart Site's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to 100% of the total fees received by Smart Site in the calendar year in which the incident occurs.

13.4 The provisions of this Clause 15 shall continue to apply notwithstanding the termination or expiry of this Agreement.

13.5 Smart Site will not be liable for any links being removed by a third party or any penalties incurred by customers.

#### **14. Confidentiality (NDA)**

14.1 Save as provided in this Agreement each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been

disclosed by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Agreement and shall ensure that such employees are subject to corresponding obligations of confidentiality.

14.2 All materials, drawings, specifications and data supplied by Smart Site to the customer shall at all times be, and remain, the exclusive property of Smart Site, but shall be held by the customer in safe custody at its own risk until returned to Smart Site, and shall not be disposed of or used other than in accordance with Smart Site's written instructions or authorisation.

14.3 This condition shall survive termination of the Agreement, however caused.

14.4 Points agreed via a separate 'Non Disclosure agreement' are agreed in addition to this agreement, not in replace of this agreement.

All code and work created by Smart Site remains the Intellectual Property of Smart Site.

#### **15. Non-Solicitation**

15.1 Neither party shall, during the continuance of the Agreement, or within 6 months of its termination, whether on behalf of itself or via a third party, solicit or seek to entice away any employee of the other. In the event of breach of this clause the party in default shall pay the other a sum equal to six months gross pay of the employee concerned being a pre-estimate of the cost of recruitment and training a replacement.

#### **16. Force Majeure**

16.1 Smart Site shall not be liable to the customer for any breach of its obligations under this the Agreement if such breach is due to or substantially contributed to a Force Majeure event.

16.2 If a Force Majeure event occurs, Smart Site shall inform the customer as soon as possible and take all reasonable steps to mitigate the effects of the Force Majeure event and resume performance

#### **17. Waiver**

17.1 A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

#### **18 Entire Agreement**

18.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

18.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

18.3 In the event of any part of this Agreement being held inapplicable or unreasonable, the remainder of the Agreement shall remain in full force and any clause held inapplicable or unreasonable shall be enforced to the fullest extent possible.

#### **19. Assignment**

19.1 The customer shall not, without the prior written consent of Smart Site, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

19.2 Smart Site may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

#### **20. Third party rights**

20.1 The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

20.2 The Client shall indemnify Smart Site against all claims, costs and expenses which Smart Site may incur and which arise, directly or indirectly, from the Client's breach of any of its obligations under this Agreement,

including any claims brought against Smart Site alleging that any services provided by Smart Site in accordance with the Service Specification infringes a patent, copyright or trade secret or other similar right of a third party.

#### **21. Notices**

21.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall be sent by email or delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or, in each case, such other address as may be notified by one party to the other.

21.2 A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An e-mail shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no “non deliverable” notices is received by the sender.

#### **22. Governing law and jurisdiction**

22.1 The Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

#### **23. Partners including resellers and referrers**

23.1. All partners agree to this agreement as well as the relevant partner agreements.

23.2 Partners or Agents do not represent, are not authorised to sign anything on behalf of or agree terms on behalf of, contract for or agree either verbally or in writing any for Smart Site.

23.3 If a customer is refunded in part or in full for fees paid for products and services from Smart Site then any commissions paid due to that contract will be clawed back from the partner or agent without discretion.

#### **24. Changes to this Agreement**

24.1. Smart Site may modify this Agreement where it is required to do so, by notifying the customer in writing and giving 30 days notice where possible. This would include where changes to the law, rules applied by other authorities which require Smart Site to modify its procedures, policies or services.

24.2. Smart Site may at any time modify this Agreement for new customers by publishing a new agreement on its website.



**SMART DIGITAL ONLINE LTD trading as SMART CONTENT & [www.smart-content-online.com](http://www.smart-content-online.com)  
TERMS AND CONDITIONS**

This document, the order form, the payment schedule and all other documentation provided by Smart Content clearly identify and state the terms and conditions on which Smart Content supply any of their products or services to their clients or resellers in their current product portfolio, whether the products are listed on the website [www.smart-content-online.com](http://www.smart-content-online.com) or not.

Clients should understand that by signing an order form and ordering any one of the Smart Content products or services, they agree to be bound by these terms and conditions, for that reason, please read this document carefully before confirming your order and request confirmation on any questions that you have prior to your order being signed. Smart Content recommends that you print a copy of these terms and conditions for your future reference.

You confirm that you accept these terms and conditions by either making a payment for any one of the Smart Digital Online Ltd or trading as companies, products and services and/or by signing the order form provided by your Account Manager and returning it by either email or by fax to 0870 298 9551 or by posting it to:

Smart Digital Online Ltd  
Unit 9a  
Great Western Railway Yard  
St Agnes  
Cornwall  
TR5 0PD

Please understand that if you refuse to accept these terms and conditions, and a compromise cannot be successfully agreed between our legal representatives then Smart Content reserve the right to not accept an order from you.

[www.smart-content-online.com](http://www.smart-content-online.com) is a website operated by Smart Digital Ltd (company no. 06055984 VAT no. 902333466) (**We, Us or Smart Content**) of Unit 9A, Great Western Railway Yard, St Agnes, Truro, TR5 0PD.

**1. Interpretation and Definitions**

1.1 In this agreement the following terms shall have the respective meanings assigned to them:

**"Agreement"** means these terms and conditions, the payment terms, the order form, the reseller agreement and the NDA. In the event of any conflict between the terms of this agreement, the details of the order form shall prevail, except for payment terms where the payment schedule shall prevail;

**"The customer"** means the company its employees, agents, representatives and sub contractors, to whom the product or service is provided as set out on the order form;

**"Commencement Date"** means the date of commencement of the Services as set out on the order form;

**"Fees"** means the amounts payable by the Customer for the Services provided by Smart Content as set out in the Order Form;

**"Force Majeure"** means any act, event, omission or accident beyond reasonable control including but not limited to Acts of God, fire, lightening, explosion, flood, extreme weather conditions, outbreak of hostilities (whether war be declared or not), riot, civil disorder or commotion, acts of terrorism, industrial disputes or acts or defaults of any local or central Government or other competent authority.



"**Initial Term**" unless otherwise stated on the Order Form [one] year from the Commencement Date

"**Order Form**" means the customers agreed schedule for the provision of Services forming part of these terms and conditions;

"**Payment Schedule**" means the agreed schedule of payments that the customer shall make to Smart Content for the Services forming part of these terms and conditions;

"**product or service**" means the services to be provided by Smart Content as specified in the order form;

"**Intellectual Property Rights**" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;

"**Service Specification**" means a statement of work, quotation or other similar document describing the services to be provided by Smart Content;

"**Smart Content**" means supplier; Smart Digital Group Limited, Unit 9A Great Western Railway, St Agnes Truro, TR5 0PD

1.2 The headings do not affect the interpretation of the Agreement.

1.3 Any reference to a party's employees includes its agents and sub-contractors.

## 2. Application of the Terms

2.1 These terms and conditions shall apply to and be incorporated in the Agreement.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Agreement shall be binding without exception, unless agreement in writing and signed by a duly authorised representative of Smart Content.

2.3 If the customer wishes to vary any part of the Agreement, the request shall be sent in writing to Smart Content Ltd prior to the order form being signed. Smart Content shall respond to the customer within 5 working days as to whether it is prepared to agree to the change and, if so, details of the cost of the change, any effect on any other part of the Agreement including any change in timescales. The customer may accept such proposal within such time as Smart Content may specify or, if none, within 7 days, failing which it shall be deemed rejected. Pending acceptance or rejection Smart Content may continue to perform the Agreement without reference to the request.

## 3. Contractual terms

3.1 Any quotation is valid for a period of 7 days only, unless otherwise specified, and Smart Content may withdraw any part of a quote, at any time by notifying the customer. Any quotation is given on the basis that no contract shall come into existence until we receive an acknowledgement of order in accordance with clause 3.3.

3.2 Each order or acceptance of a quotation for products or services by the customer shall be deemed to be an offer by the customer subject to these conditions. The customer shall ensure that its order is complete and accurate.

3.3 No order for products and services placed by the customer shall be deemed to be accepted by Smart Content until a written acknowledgement and payment (including email) is received by Smart Contents, or, if earlier, when Smart Content begins to provide the products and services to the customer.

3.4 No agreement may be cancelled by the customer, except with the prior agreement in writing of Smart Content and provided that the customer indemnifies Smart Content in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Smart Content as a result of the cancellation.

3.5 Smart Content's employees are not authorised to make any contractually binding representations concerning the Services. In entering into the Agreement, the customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Smart Content.

3.6 Contract Cancellation – With the consent of a Smart Content Director, 12 month contracts may be allowed to be cancelled with 60 days prior written notice being sent by the customer and received by Smart Content. Upon cancellation 50% of the remaining contract balance will be payable by the customer. PLEASE note: Web content design contracts will not be allowed to be cancelled under any circumstances, only products relating to 12 month terms will be considered to be allowed to be cancelled.

3.7 Any services provided and already delivered as part of a contract bonus or services that were agreed to be provided at a discount due to the client commitment to a contract term, will be invoiced at the full rate card amount if the contract term is not completed in full. The difference between the rate the client paid and the full rate card amount will be invoiced by Smart Content and difference payable by the customer.

#### **4. Customer's obligations**

4.1 The customer will provide Smart Content with reasonable direct and remote access to its website and shall provide such other reasonable assistance as Smart Content may request.

4.2 The customer shall comply with directions and advice from Smart Content within a reasonable period.

4.3 The customer shall not interfere or disrupt the Service.

#### **5. Implementation of Service**

5.1. In consideration of the payment by the customer of the fees in accordance with clause 11, Smart Content shall provide the products and services during the continuance of this Agreement.

5.2. Smart Content shall be permitted to subcontract or outsource any of the products and services or obligations under this Agreement.

5.3. Smart Content will use reasonable efforts to provide customers with the products and services in accordance with the estimated timeline set out in the order form.

5.4. Where the product or service being provided requires, Smart Content will liaise with the relevant web agency, hosting company or other third party in order to provide the product or services. Smart Content shall not be liable for any act or omission by the relevant web agency, hosting company or other third party, if such act or omission results in Smart Content breaching its obligations under this agreement.

5.5. Smart Content will not make changes to or update a customer's website prior to written or verbal consent from the customer, stating that Smart Content have the right to make the agreed changes and the Customer, as the website owner, agrees to and takes full responsibility for those changes being made.

#### **6. Services**

6.1 Smart Content offers no guarantee for the business generated by the Content products either onsite or on external sites

6.2 Smart Content write content for clients website or about the clients business on behalf of the client and to specification agreed by the client. It is the clients responsibility to add or not, any of the content submitted by Smart Content to their website.

#### **7 Exclusions from products and services**

7.1 When Smart Content is required to integrate with third party software Smart Content are in no way responsible for the 3<sup>rd</sup> party service level.

7.2 Bespoke content packages are signed off as agreed plans before the work begins. Any subsequent changes thereafter that diversify from the plan are chargeable and quoted for on an individual basis prior to that change being agreed as part of the contract between the parties.

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I. appropriate any payment made by the customer to any outstanding sum;

II. Charge interest on the amount outstanding from the due date to the date of receipt by Smart Content (whether or not after judgment), at the annual rate of 4% above the then current base lending rate of Barclays Bank plc, accruing daily and compounded quarterly; and

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I. Fails to pay any sum due under this agreement and such sum remains unpaid for 14 days after written notice from Smart Content that such sum has not been paid;

II. Ceases to carry on business or become insolvent, or have an administrator or receiver appointed or enters into liquidation or enter into any agreement with its creditors; or

III. Failed to fulfil any of its obligations under any part of this or any other agreement that it has with Smart Content; or

IV. Interferes with or impairs the products or service, or Smart Content's ability to deliver the products or services.

10.2 Termination of the Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

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13.2 All warranties, conditions and other terms implied by statute or common law are excluded from the contract to the fullest extent permitted by law.

13.3 Nothing in these conditions excludes or limits the liability of Smart Content for death or personal injury caused by Smart Content's negligence or fraud or fraudulent misrepresentation. Subject to:

I. Smart Content shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and

II. Smart Content's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to 100% of the total fees received by Smart Content in the calendar year in which the incident occurs.

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14.4 Points agreed via a separate 'Non Disclosure agreement' are agreed in addition to this agreement, not in replace of this agreement.

All code and work created by Smart Content remains the Intellectual Property of Smart Content.

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#### **17. Waiver**

17.1 A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

#### **18 Entire Agreement**

18.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

18.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

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19.2 Smart Content may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

## **20. Third party rights**

20.1 The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

20.2 The Client shall indemnify Smart Content against all claims, costs and expenses which Smart Content may incur and which arise, directly or indirectly, from the Client's breach of any of its obligations under this Agreement, including any claims brought against Smart Content alleging that any services provided by Smart Content in accordance with the Proposal/Order Form infringes a patent, copyright or trade secret or other similar right of a third party.

## **21. Notices**

21.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall be sent by email or delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or, in each case, such other address as may be notified by one party to the other.

21.2 A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An e-mail shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no "non deliverable" notices is received by the sender.

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22.1 The Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

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23.1. All partners agree to this agreement as well as the relevant partner agreements.

23.2 Partners or Agents do not represent, are not authorised to sign anything on behalf of or agree terms on behalf of, contract for or agree either verbally or in writing any for Smart Content.

23.3 If a customer is refunded in part or in full for fees paid for products and services from Smart Content then any commissions paid due to that contract will be clawed back from the partner or agent without discretion.

## **24. Changes to this Agreement**

24.1. Smart Content may modify this Agreement where it is required to do so, by notifying the customer in writing and giving 30 days notice where possible. This would include where changes to the law, rules applied by other authorities which require Smart Content to modify its procedures, policies or services.

24.2. Smart Content may at any time modify this Agreement for new customers by publishing a new agreement on its website.



**SMART DIGITAL ONLINE LTD trading as SMART CLICK & [www.smart-click-online.com](http://www.smart-click-online.com)  
TERMS AND CONDITIONS**

This document, the order form, the payment schedule and all other documentation provided by Smart Site clearly identify and state the terms and conditions on which Smart Click supply any of their products or services to their clients or resellers in their current product portfolio, whether the products are listed on the website [www.smart-click-online.com](http://www.smart-click-online.com) or not.

Clients should understand that by signing an order form and ordering any one of the Smart Click products or services, they agree to be bound by these terms and conditions, for that reason, please read this document carefully before confirming your order and request confirmation on any questions that you have prior to your order being signed. Smart Click recommends that you print a copy of these terms and conditions for your future reference.

You confirm that you accept these terms and conditions by either making a payment for any one of the Smart Digital Online Ltd or trading as companies, products and services and/or by signing the order form provided by your Account Manager and returning it by either email or by fax to 0870 298 9551 or by posting it to:

Smart Digital Online Ltd  
Unit 9a  
Great Western Railway Yard  
St Agnes  
Cornwall  
TR5 0PD

Please understand that if you refuse to accept these terms and conditions, and a compromise cannot be successfully agreed between our legal representatives then Smart Click reserve the right to not accept an order from you.

[www.smart-click-online.com](http://www.smart-click-online.com) is a website operated by Smart Digital Ltd (company no. 06055984 VAT no. 902333466) (**We, Us or Smart Click**) of Unit 9A, Great Western Railway Yard, St Agnes, Truro, TR5 0PD.

**1. Interpretation and Definitions**

1.1 In this agreement the following terms shall have the respective meanings assigned to them:

"**Agreement**" means these terms and conditions, the payment terms, the order form, the reseller agreement and the NDA. In the event of any conflict between the terms of this agreement, the details of the order form shall prevail, except for payment terms where the payment schedule shall prevail;

"**The customer**" means the company its employees, agents, representatives and sub contractors, to whom the product or service is provided as set out on the order form;

"**Commencement Date**" means the date of commencement of the Services as set out on the order form;

"**Fees**" means the amounts payable by the Customer for the Services provided by Smart Click as set out in the Order Form;

"**Force Majeure**" means any act, event, omission or accident beyond reasonable control including but not limited to Acts of God, fire, lightening, explosion, flood, extreme weather conditions, outbreak of hostilities (whether war be declared or not), riot, civil disorder or commotion, acts of terrorism, industrial disputes or acts or defaults of any local or central Government or other competent authority;





**"Initial Term"** unless otherwise stated on the Order Form [one] year from the Commencement Date

**"Order Form"** means the customers agreed schedule for the provision of Services forming part of these terms and conditions;

**"Payment Schedule"** means the agreed schedule of payments that the customer shall make to Smart Click for the Services forming part of these terms and conditions;

The **"product or service"** means the services to be provided by Smart Click as specified in the order form;

1.2 The headings do not affect the interpretation of the Agreement.

1.3 Any reference to a party's employees includes its agents and sub-contractors.

## **2. Application of the Terms**

2.1 These terms and conditions shall apply to and be incorporated in the Agreement.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Agreement shall be binding without exception, unless agreement in writing and signed by a duly authorised representative of Smart Click.

2.3 If the customer wishes to vary any part of the Agreement, the request shall be sent in writing to Smart Click Ltd prior to the order form being signed. Smart Click shall respond to the customer within 5 working days as to whether it is prepared to agree to the change and, if so, details of the cost of the change, any effect on any other part of the Agreement including any change in timescales. The customer may accept such proposal within such time as Smart Click may specify or, if none, within 7 days, failing which it shall be deemed rejected. Pending acceptance or rejection Smart Click may continue to perform the Agreement without reference to the request.

## **3. Contractual terms**

3.1 Any quotation is valid for a period of 7 days only, unless otherwise specified, and Smart Click may withdraw any part of a quote, at any time by notifying the customer. Any quotation is given on the basis that no contract shall come into existence until we receive an acknowledgement of order in accordance with clause 3.3.

3.2 Each order or acceptance of a quotation for products or services by the customer shall be deemed to be an offer by the customer subject to these conditions. The customer shall ensure that its order is complete and accurate.

3.3 No order for products and services placed by the customer shall be deemed to be accepted by Smart Click until a written acknowledgement and payment (including email) is received by Smart Click, or, if earlier, when Smart Click begins to provide the products and services to the customer.

3.4 No agreement may be cancelled by the customer, except with the prior agreement in writing of Smart Click and provided that the customer indemnifies Smart Click in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Smart Click as a result of the cancellation.

3.5 Smart Click's employees are not authorised to make any contractually binding representations concerning the Services. In entering into the Agreement, the customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Smart Click.

3.6 Contract Cancellation – With the consent of a Smart Click Director, 12 month contracts may be allowed to be cancelled with 60 days prior written notice being sent by the customer and received by Smart Click. Upon cancellation 50% of the remaining contract balance will be payable by the customer. PLEASE note: Pay per click contracts will not be allowed to be cancelled under any circumstances, only products relating to 12 month terms will be considered to be allowed to be cancelled.



3.7 Any services provided and already delivered as part of a contract bonus or services that were agreed to be provided at a discount due to the client commitment to a contract term, will be invoiced at the full rate card amount if the contract term is not completed in full. The difference between the rate the client paid and the full rate card amount will be invoiced by Smart Click and difference payable by the customer.

#### **4. Customer's obligations**

4.1 The customer will provide Smart Click with reasonable direct and remote access to its website, servers and Google Adwords account and shall provide such other reasonable assistance as Smart Click may request, including, but not limited to, providing source code and other statistical, diagnostic information and other relevant information required to enable Smart Click to comply with its obligations under this Agreement.

4.2 The customer shall comply with directions and advice from Smart Click within a reasonable period.

4.3 The customer shall not interfere or disrupt the Service.

#### **5. Implementation of Service**

5.1. In consideration of the payment by the customer of the fees in accordance with clause 11, Smart Click shall provide the products and services during the continuance of this Agreement.

5.2. Smart Click shall be permitted to subcontract or outsource any of the products and services or obligations under this Agreement.

5.3. Smart Click will use reasonable efforts to provide customers with the products and services in accordance with the estimated timeline set out in the order form.

5.4. Where the product or service being provided requires, Smart Click will liaise with the relevant web agency, hosting company or other third party in order to provide the product or services. Smart Click shall not be liable for any act or omission by the relevant web agency, hosting company or other third party, if such act or omission results in Smart Click breaching its obligations under this agreement.

5.5. Smart Click agree to change and or update a customer's adwords campaign on behalf of the customer. The customer indemnifies Smart Click from any claim whatsoever from loss of income, loss of positions or reduction in clicks when the new changes are being implemented. Smart Click will keep a copy of the original campaign and reverting back to a previous set up, if the client requests, given 48 hours notice. The customer agrees to and takes full responsibility for those ALL changes and updates being made.

#### **6. Services**

6.1 You will contract directly with the search engines for your adwords campaign. This means that any billing issues, customer service issues or other issues you have with the supplier you will need to contact the supplier

6.2 Smart Click offers no guarantee for the business generated by your website.

6.3 Payment gateways such as Paypal and such are not the responsibility of Smart Click, nor is the functionality of your website

6.4 Any loss of ranking by the by your website when Smart Click launch your new campaign is not the responsibility of Smart Click although best endeavours will be adhered to to ensure minimum disruption to already running campaigns. Rankings on search engines and other factors outside the control of Smart Click will be down to the website owner and other parties they contract with for such rankings including the search engine themselves.

#### **7 Exclusions from products and services**

7.1 When Smart Click is required to integrate with third party software Smart Click are in no way responsible for the 3<sup>rd</sup> party service level.

7.2 Smart Click are not responsible for any fees paid to Google Inc. under any circumstance whatsoever.

Google does not refund PPC fees and those fees are not covered under the terms of this agreement. Any payment dispute over PPC fees, adwords billing etc must be directed to Google.

## 8. Contract Term

8.1 The Services shall commence on the commencement Date and shall remain in force from year to year thereafter, unless and until terminated by either party giving 60 days notice expiring at any time after the end of the initial term or otherwise in accordance with clause 3.6 and any other clause stated in this contract

## 9. Payment

9.1 The customer shall pay the fees without set-off, deduction or delay, monthly in advance in the manner specified in the payment schedule. All prices are exclusive of VAT. No products or services shall be provided until payment has been received by Smart Click, unless Director Approval has been obtained. Smart Click shall be entitled at any time, and from time to time, to increase the fees to accord with any change in Smart Click's standard scale of charges by giving to the customer not less than [90] days' prior written notice.

9.2 If Smart Click provides any services not included within the Services at the request of the customer then Smart Click shall charge for the same at its then current price and the customer shall pay any invoice raised in respect of the same within 30 days.

9.3 The date for payment of Smart Click's invoices shall be of the essence of the Agreement.

9.4 If the customer fails to make payment in full on the due date, the whole of the balance of the fees then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Smart Click, all guarantees are null and voided and Smart Click may:

I. appropriate any payment made by the customer to any outstanding sum;

II. Charge interest on the amount outstanding from the due date to the date of receipt by Smart Click (whether or not after judgment), at the annual rate of 4% above the then current base lending rate of Barclays Bank plc, accruing daily and compounded quarterly; and

III. Suspend all further delivery of services until payment has been received in full.

9.5 The Fees are not refundable, except where otherwise stated herein.

9.6 Cheques and direct debits returned unpaid by the customer's bank and credit card payments returned unpaid will incur an administration charge which under all circumstances shall be paid by the customer.

9.7 All legal fees incurred by Smart Click related to collecting late payments will be add to the invoice and charged accordingly to the customer without exception

## 10. Termination or suspension of service

10.1 Smart Click may, at its sole discretion, suspend the services or terminate this Agreement if the customer;

I. Fails to pay any sum due under this agreement and such sum remains unpaid for 14 days after written notice from Smart Click that such sum has not been paid;

II. Ceases to carry on business or become insolvent, or have an administrator or receiver appointed or enters into liquidation or enter into any agreement with its creditors; or

III. Failed to fulfil any of its obligations under any part of this or any other agreement that it has with Smart Click; or

IV. Interferes with or impairs the products or service, or Smart Click's ability to deliver the products or services.

10.2 Termination of the Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

## 11. Dispute Resolution Procedure

11.1 If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet promptly or arrange a teleconference in good faith to resolve the dispute.

11.2 If the dispute is not resolved in accordance with conditions set, then Smart Click will refer the dispute, to be appointed, in default of agreement, on the request of either party to the English Courts. In any claim Smart Click will submit a claim for interest in accordance with section and all legal costs associated to the claim against the customer.

## **12. Data Protection Act**

12.1 If any Personal Data (as defined by the Data Protection Act 1998) is passed to Smart Click under this Agreement then the parties agree that the customer is the Data Controller and that Smart Click is the Data Processor.

12.2 The customer warrants that it complies with the Data Protection Act 1998

12.3 Smart Click shall:

- I. process the Personal Data only in accordance with instructions from customer;
- II. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the services or as is required by Law or any Regulatory Body;
- III. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure; and
- IV. take reasonable steps to ensure the reliability and confidentiality of any of Smart Click's personnel who have access to the Personal Data.

## **13. Limitation of liability**

13.1 The following provisions set out the entire liability of Smart Click (including any liability for the acts or omissions of its employees) to the customer in respect of any breach of the Agreement and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Agreement.

13.2 All warranties, conditions and other terms implied by statute or common law are excluded from the contract to the fullest extent permitted by law.

13.3 Nothing in these conditions excludes or limits the liability of Smart Click for death or personal injury caused by Smart Click's negligence or fraud or fraudulent misrepresentation. Subject to:

- I. Smart Click shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and
- II. Smart Click's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to 100% of the total fees received by Smart Click in the calendar year in which the incident occurs.

13.4 The provisions of this Clause 15 shall continue to apply notwithstanding the termination or expiry of this Agreement.

13.5 Smart Click will not be liable for any links being removed by a third party or any penalties incurred by customers.

## **14. Confidentiality (NDA)**

14.1 Save as provided in this Agreement each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Agreement and shall ensure that such employees are subject to corresponding obligations of confidentiality.

14.2 All materials, drawings, specifications and data supplied by Smart Click to the customer shall at all times be, and remain, the exclusive property of Smart Click, but shall be held by the customer in safe custody at its own risk until returned to Smart Click, and shall not be disposed of or used other than in accordance with Smart Click's written instructions or authorisation.

14.3 This condition shall survive termination of the Agreement, however caused.

14.4 Points agreed via a separate 'Non Disclosure agreement' are agreed in addition to this agreement, not in replace of this agreement.

14.5 All code and work created by Smart Click remains the Intellectual Property of Smart Click.

**15. Non-Solicitation**

15.1 Neither party shall, during the continuance of the Agreement, or within 6 months of its termination, whether on behalf of itself or via a third party, solicit or seek to entice away any employee of the other. In the event of breach of this clause the party in default shall pay the other a sum equal to six months gross pay of the employee concerned being a pre-estimate of the cost of recruitment and training a replacement.

**16. Force Majeure**

16.1 Smart Click shall not be liable to the customer for any breach of its obligations under this the Agreement if such breach is due to or substantially contributed to a Force Majeure event.

16.2 If a Force Majeure event occurs, Smart Click shall inform the customer as soon as possible and take all reasonable steps to mitigate the effects of the Force Majeure event and resume performance

**17. Waiver**

17.1 A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

**18 Entire Agreement**

18.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

18.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

18.3 In the event of any part of this Agreement being held inapplicable or unreasonable, the remainder of the Agreement shall remain in full force and any clause held inapplicable or unreasonable shall be enforced to the fullest extent possible.

**19. Assignment**

19.1 The customer shall not, without the prior written consent of Smart Click, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

19.2 Smart Click may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

**20. Third party rights**

20.1 The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

20.2 The Client shall indemnify Smart Click against all claims, costs and expenses which Smart Click may incur and which arise, directly or indirectly, from the Client's breach of any of its obligations under this Agreement, including any claims brought against Smart Click alleging that any services provided by Smart Click in accordance with the Service Specification infringes a patent, copyright or trade secret or other similar right of a third party.

**21. Notices**

21.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall be sent by email or delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or, in each case, such other address as may be notified by one party to the other.

21.2 A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An e-mail shall be deemed to have been delivered

within 24 hours from the time of being sent, provided that no “non deliverable” notices is received by the sender.

## **22. Governing law and jurisdiction**

22.1 The Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

## **23. Partners**

23.1. All partners agree to this agreement as well as the relevant partner agreements.

23.2 Partners or Agents do not represent, are not authorised to sign anything on behalf of or agree terms on behalf of, contract for or agree either verbally or in writing any for Smart Click.

23.3 If a customer is refunded in part or in full for fees paid for products and services from Smart Click then any commissions paid due to that contract will be clawed back from the partner or agent without discretion.

## **24. Changes to this Agreement**

24.1. Smart Click may modify this Agreement where it is required to do so, by notifying the customer in writing and giving 30 days notice where possible. This would include where changes to the law, rules applied by other authorities which require Smart Click to modify its procedures, policies or services.

24.2. Smart Click may at any time modify this Agreement for new customers by publishing a new agreement on its website.

**SMART DIGITAL ONLINE LTD trading as SMART STICK & [www.usbfactory.co.uk](http://www.usbfactory.co.uk)**

## **TERMS AND CONDITIONS**

This document, the order form, the payment schedule and all other documentation provided by Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) clearly identify and state the terms and conditions on which Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) supply any of their products or to their clients or resellers in their current product portfolio, whether the products are listed on the website [www.usbfactory.co.uk](http://www.usbfactory.co.uk) or not.

Clients should understand that by signing an order form and ordering any one of the [www.usbfactory.co.uk](http://www.usbfactory.co.uk) products, they agree to be bound by these terms and conditions, for that reason, please read this document carefully before confirming your order and request confirmation on any questions that you have prior to your order being signed. Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) recommends that you print a copy of these terms and conditions for your future reference.

You confirm that you accept these terms and conditions by either making a payment for any one of the Smart Digital Online Ltd or trading as companies, products and services and/or by signing the order form provided by your Account Manager and returning it by either email or by fax to 0870 298 9551 or by posting it to:

Smart Digital Online Ltd  
Unit 9a  
Great Western Railway Yard  
St Agnes  
Cornwall  
TR5 0PD

Please understand that if you refuse to accept these terms and conditions, and a compromise cannot be successfully agreed between our legal representatives then Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) reserve the right to not accept an order from you.

[www.usbfactory.c.uk](http://www.usbfactory.c.uk) is a website operated by Smart Digital Ltd (company no. 06055984 VAT no. 902333466) (**We, Us or Smart Click ([www.usbfactory.co.uk](http://www.usbfactory.co.uk))**) of Unit 9A, Great Western Railway Yard, St Agnes, Truro, TR5 0PD.

### **1. Interpretation and Definitions**

1.1 In this agreement the following terms shall have the respective meanings assigned to them:

**"Agreement"** means these terms and conditions, the payment terms, the order form, the purchase order, the digital design sign off. In the event of any conflict between the terms of this agreement, the details of the order form shall prevail, except for payment terms where the payment schedule shall prevail;

**"The customer"** means the company its employees, agents, representatives and sub contractors, to whom the product or service is provided as set out on the order form;

**"Fees"** means the amounts payable by the Customer for the products provided by Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) as set out in the Order Form;

**"Force Majeure"** means any act, event, omission or accident beyond reasonable control including but not limited to Acts of God, fire, lightening, explosion, flood, extreme weather conditions, outbreak of hostilities

(whether war be declared or not), riot, civil disorder or commotion, acts of terrorism, industrial disputes or acts or defaults of any local or central Government or other competent authority;

"**Order Form**" means the customers agreed order form for USB Memory sticks, the style and the amount ordered as well as the memory size which together form part of these terms and conditions;

"**Intellectual Property Rights**" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;

"**Product Specification**" means a statement of work, quotation or other similar document describing the products to be provided by Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk));

" Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk))" means supplier; Smart Digital Group Limited, Unit 9A Great Western Railway, St Agnes Truro, TR5 0PD

1.2 The headings do not affect the interpretation of the Agreement.

1.3 Any reference to a party's employees includes its agents and sub-contractors.

## 2. Application of the Terms

2.1 These terms and conditions shall apply to and be incorporated in the Agreement.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Agreement shall be binding without exception, unless agreement in writing and signed by a duly authorised representative of Smart Content.

2.3 If the customer wishes to vary any part of the Agreement, the request shall be sent in writing to Smart Content Ltd prior to the order form being signed. Smart Content shall respond to the customer within 5 working days as to whether it is prepared to agree to the change and, if so, details of the cost of the change, any effect on any other part of the Agreement including any change in timescales. The customer may accept such proposal within such time as Smart Content may specify or, if none, within 7 days, failing which it shall be deemed rejected. Pending acceptance or rejection Smart Content may continue to perform the Agreement without reference to the request.

## 3. Contractual terms

3.1 Any quotation is valid for a period of 7 days only, unless otherwise specified, and Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) may withdraw any part of a quote, at any time by notifying the customer. Any quotation is given on the basis that no contract shall come into existence until we receive an acknowledgement of order in accordance with clause 3.3.

3.2 Each order or acceptance of a quotation for products or services by the customer shall be deemed to be an offer by the customer subject to these conditions. The customer shall ensure that its order is complete and accurate.

3.3 No order for products placed by the customer shall be deemed to be accepted by Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) until a written acknowledgement and/or payment (including email) is received by Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)).

3.4 No agreement may be cancelled by the customer, except with the prior agreement in writing of Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) and provided that the customer indemnifies Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) as a result of the cancellation.

3.5 Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk))'s employees are not authorised to make any contractually binding representations concerning the product. In entering into the Agreement, the customer acknowledges that it

does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)).

#### **4. Customer's obligations**

4.1 The customer will provide Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) with a signed order form and design agreement prior to any production work being started

4.2 The customer shall not interfere or disrupt the product production and or delivery.

#### **5. Production and delivery schedule**

5.1. Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) shall be permitted to subcontract or outsource any part of the production and delivery process or other obligations under this Agreement.

5.2. Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) will use reasonable efforts to provide customers with the products

5.4. Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) will not take responsibility for issues that arise that are out of their direct control.

#### **6 Exclusions from products**

6.1 When Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) is required to integrate load memory stick with third party data or software, Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) is in no way responsible for the 3<sup>rd</sup> party service level.

#### **7. Contract Term**

7.1 The products or terms of the contract will be deemed complete when the final order for products has been fulfilled and signed for by clients.

#### **8. Payment**

8.1 The customer shall pay the fees without set-off, deduction or delay, in advance of production unless otherwise agreed.

8.2 If a payment date after delivery has been agreed then Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)'s invoices, which contain the payment due dates, shall be of the essence of the Agreement.

8.3 If the customer fails to make payment in full on the due date, the whole of the balance of the fees then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) may:

I. appropriate any payment made by the customer to any outstanding sum;

II. Charge interest on the amount outstanding from the due date to the date of receipt of the PURCHASE ORDER or ORDER FORM or CONFIRMATION EMAIL by Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) (whether or not after judgment), at the annual rate of 4% above the then current base lending rate of Barclays Bank plc, accruing daily and compounded quarterly; and

III. Suspend all further delivery of product deliveries until payment has been received in full.

8.4 The Fees are not refundable, except where otherwise stated herein.

8.5 Cheques and direct debits returned unpaid by the customer's bank and credit card payments returned unpaid will incur an administration charge which under all circumstances shall be paid by the customer.

8.6 All legal fees incurred by Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) related to collecting late payments will be add to the invoice and charged accordingly to the customer without exception

## 9. Dispute Resolution Procedure

9.1 If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet promptly or arrange a teleconference in good faith to resolve the dispute.

9.2 If the dispute is not resolved in accordance with conditions set, then Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) will refer the dispute, to be appointed, in default of agreement, on the request of either party to the English Courts. In any claim Smart Content will submit a claim for interest in accordance with section and all legal costs associated to the claim against the customer.

## 10. Data Protection Act

10.1 If any Personal Data (as defined by the Data Protection Act 1998) is passed to Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) under this Agreement then the parties agree that the customer is the Data Controller and that Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) is the Data Processor.

10.2 The customer warrants that it complies with the Data Protection Act 1998

10.3 Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) shall:

- I. Process the Personal Data only in accordance with instructions from customer;
- II. Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the products or as is required by Law or any Regulatory Body;
- III. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure; and
- IV. Take reasonable steps to ensure the reliability and confidentiality of any of Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk))'s personnel who have access to the Personal Data.

## 11. Limitation of liability

11.1 The following provisions set out the entire liability of Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) (including any liability for the acts or omissions of its employees) to the customer in respect of any breach of the Agreement and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Agreement.

11.2 All warranties, conditions and other terms implied by statute or common law are excluded from the contract to the fullest extent permitted by law.

11.3 Nothing in these conditions excludes or limits the liability of Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) for death or personal injury caused by Smart Content's negligence or fraud or fraudulent misrepresentation. Subject to:

I. Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and

II. Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk))'s total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to 100% of the total fees received by Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) in the calendar year in which the incident occurs.

11.4 The provisions of this Clause 11 shall continue to apply notwithstanding the termination or expiry of this Agreement.

## 12. Non-Solicitation

12.1 Neither party shall, during the continuance of the Agreement, or within 6 months of its termination, whether on behalf of itself or via a third party, solicit or seek to entice away any employee of the other. In the event of breach of this clause the party in default shall pay the other a sum equal to six months gross pay of the employee concerned being a pre-estimate of the cost of recruitment and training a replacement.

### **13. Force Majeure**

13.1 Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) shall not be liable to the customer for any breach of its obligations under this the Agreement if such breach is due to or substantially contributed to a Force Majeure event.

13.2 If a Force Majeure event occurs, Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) shall inform the customer as soon as possible and take all reasonable steps to mitigate the effects of the Force Majeure event and resume performance

### **14. Waiver**

14.1 A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

### **15 Entire Agreement**

15.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

15.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

15.3 In the event of any part of this Agreement being held inapplicable or unreasonable, the remainder of the Agreement shall remain in full force and any clause held inapplicable or unreasonable shall be enforced to the fullest extent possible.

### **16. Assignment**

16.1 The customer shall not, without the prior written consent of Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

16.2 Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

### **17. Third party rights**

17.1 The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

17.2 The Client shall indemnify Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) against all claims, costs and expenses which Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) may incur and which arise, directly or indirectly, from the Client's breach of any of its obligations under this Agreement, including any claims brought against Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) alleging that any products provided by Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) in accordance with the Order Form infringes a patent, copyright or trade secret or other similar right of a third party.

### **18. Notices**

18.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall be sent by email or delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or, in each case, such other address as may be notified by one party to the other.

18.2 A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An e-mail shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no "non deliverable" notices is received by the sender.

**19. Governing law and jurisdiction**

19.1 The Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

**20. Partners including resellers and referrers**

20.1. All partners agree to this agreement as well as the relevant partner agreements.

20.2 Partners or Agents do not represent, are not authorised to sign anything on behalf of or agree terms on behalf of, contract for or agree either verbally or in writing any for Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)).

20.3 If a customer is refunded in part or in full for fees paid for products and services from Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) then any commissions paid due to that contract will be clawed back from the partner or agent without discretion.

**21. Changes to this Agreement**

21.1. Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) may modify this Agreement where it is required to do so, by notifying the customer in writing and giving 30 days notice where possible. This would include where changes to the law, rules applied by other authorities which require Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) to modify its procedures, policies or services.

21.2. Smart Stick ([www.usbfactory.co.uk](http://www.usbfactory.co.uk)) may at any time modify this Agreement for new customers by publishing a new agreement on its website.