



## CHEERFUL TWENTYFIRST, INC. STANDARD TERMS & CONDITIONS OF BUSINESS (CLIENTS)

### 1. CHARGES & PAYMENT

- 1.1 All costs, charges and expenses shall be agreed in advance between the Parties as set out in the quote provided by Cheerful 21st in respect of the provision of the Goods and/or Services to the Client ("Quote") or Schedule 3, for the supply of any Goods and/or Services, and shall be exclusive of sales tax, if applicable, unless otherwise expressly stated in Schedule 3.
- 1.2 The costs, charges and expenses set out in the Quote or Schedule 3 shall be exclusive of the costs of packaging, insurance and carriage of the Goods and/or Services.
- 1.3 The price for Goods shall be the price set out in Schedule 3 and the Quote or, if no price is quoted or set out in Schedule 3, the price set out in Cheerful 21st's published price list as at the date of the order; and shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Client if not agreed as within the budget.
- 1.4 The charges for the Services shall be as set out in Schedule 3 and if not set out, then the charges for the Services shall be calculated on a time and materials basis. This shall be calculated in accordance with Cheerful 21st's daily fee rates, as set out in then current price list and calculated on the basis of an eight (8) hour day, with its standard overtime rate being a percentage of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the eight (8) hour period; and
- 1.5 Unless agreed as within the price and set out in Schedule 3, Cheerful 21st shall be entitled to charge the Client for any expenses reasonably incurred by the individuals or persons whom Cheerful 21st engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Cheerful 21st for the performance of the Services, and for the cost of any materials.
- 1.6 Cheerful 21st reserves the right to increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the higher of the percentage increase in the CPI Index in the preceding twelve (12) month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the CPI. For purposes hereof the "CPI" shall mean the Consumer Price Index as published by the U.S. Department of Labor for all items of goods and services purchased by all urban wage earners in the NYC area, 1982-84 = 100, or its successor index;
- 1.7 Cheerful 21st shall be entitled to increase the price of the Goods, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Goods to Cheerful 21st that is due to:
  - 1.7.1 any factor beyond the control of Cheerful 21st including increases in taxes and duties, and increases in labor, materials and other manufacturing costs);
  - 1.7.2 any request by the Client to change the delivery date(s), quantities or types of Goods ordered, or the Goods specification; or
  - 1.7.3 any delay caused by any instructions of the Client in respect of the Goods or failure of the Client to give Cheerful 21st adequate or accurate information or instructions in respect of the Goods.
- 1.8 In respect of the Goods, unless contained in the agreed price with the Client and set out in Schedule 3, Cheerful 21st shall be entitled to invoice the Client on or at any time after completion of delivery. Subject to Schedule 3, in respect of Services, Cheerful 21st shall invoice the Client on monthly or quarterly in arrear.
- 1.9 Unless otherwise provided in Schedule 3, the Client shall pay each invoice submitted by Cheerful 21st:

- 1.9.1 within thirty (30) days of the date of the invoice or in accordance with any other credit terms agreed by Cheerful 21<sup>st</sup> and confirmed in writing to the Client; and
- 1.9.2 in full and in cleared funds to a bank account nominated in writing by Cheerful 21<sup>st</sup>, and time for payment shall be of the essence of this Agreement.
- 1.10 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 2. **RESPONSIBILITIES & ACKNOWLEDGEMENTS**
- 2.1 Cheerful 21<sup>st</sup> shall manage, complete and provide the Goods and/or Services to the Client, in accordance with the Service Specification or any agreed project plan, and shall use its reasonable endeavors to allocate sufficient resources in connection with the Event and provision of the Goods and/or Services to enable it to comply with this obligations under this Agreement.
- 2.2 Cheerful 21<sup>st</sup> shall endeavor to meet any Event milestones specified in the Service Specification.
- 2.3 Cheerful 21<sup>st</sup> shall:
  - 2.3.1 co-operate with the Client in all matters relating to the Goods and/or Services and the Event and shall use reasonable skill and care in the performance of its obligations under this Agreement.
  - 2.3.2 use reasonable endeavors to seek to procure the availability of the Key Personnel to provide the Goods and/or Services on such days, and at such times, as agreed with the Client and set out in the Service Specification;
  - 2.3.3 as soon as reasonably practicable, inform the Client of the absence (or anticipated absence) of any Key Personnel. Cheerful 21<sup>st</sup> shall be entitled to provide a suitably qualified replacement of the absent Key Personnel;
  - 2.3.4 not make any wholesale changes to the Key Personnel without the prior written approval of the Client, such approval not to be unreasonably withheld, conditioned or delayed.
- 2.4 Cheerful 21<sup>st</sup> shall:
  - 2.4.1 as soon as reasonably practicable, notify the Client as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Goods and/or Services; and
  - 2.4.2 before the date on which the Goods and/or Services are required, obtain, and at all relevant times, maintain all required licenses or consents and comply with relevant applicable legislation in relation to:
    - (a) the provision of the Goods and/or Services;
    - (b) the use of all documents, information and materials provided by Cheerful 21<sup>st</sup> or its agents, subcontractors, consultants or employees relating to the Goods and/or Services which existed prior to the commencement of this Agreement, including designs and specifications.
- 2.5 The Parties acknowledge and agree that they are entering into this Agreement on the basis of the Service Specification and that the Service Specification is accurate and complete in all material respects, and is not misleading.
- 2.6 Each Party shall comply with all applicable laws, statutes, regulations and codes and policies relating to anti-bribery and anti-corruption including but not limited to the U.S. Foreign Corrupt Practices Act, 1977, as amended, and the UK Bribery Act 2010.
- 2.7 Cheerful 21<sup>st</sup> shall use its reasonable endeavors to seek to ensure that any sub- contractor or person associated with Cheerful 21<sup>st</sup> who is providing Goods and/or Services on behalf of Cheerful 21<sup>st</sup> in connection with this Agreement, does so only on the basis of a contract

which imposes on and secures from such sub-contractor or person relevant terms equivalent to those imposed on Cheerful 21<sup>st</sup> in this Agreement in respect of confidentiality, compliance or to use reasonable skill and care.

- 2.8 These General Terms and Conditions apply to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.9 Any quotation given by Cheerful 21<sup>st</sup> shall not constitute an offer, and is only valid for a period of twenty (20) business days from its date of issue.
- 2.10 The provisions of this Agreement shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.11 If the Client fails to make a payment due to Cheerful 21<sup>st</sup> under this Agreement by the due date, then, without limiting Cheerful 21<sup>st</sup>'s termination rights and remedies under this Agreement, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at four per cent (4%) a year above the Prime Rate then being charged by Citibank, N.A., but at four per cent (4%) a year for any period when that Prime Rate is below zero (0%).
- 2.12 Subject to Schedule 3, all amounts payable by the Client under this Agreement are exclusive of amounts in respect of sales tax chargeable from time to time. Where any taxable supply for sales tax purposes is made under this Agreement by Cheerful 21<sup>st</sup> to the Client, the Client shall, on receipt of a valid invoice from Cheerful 21<sup>st</sup>, pay to Cheerful 21<sup>st</sup> such additional amounts in respect of sales tax as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 2.13 To the extent that the Goods are to be manufactured in accordance with a Goods specification supplied by the Client, the Client shall indemnify Cheerful 21<sup>st</sup> against all liabilities, costs, expenses, damages and losses and all other reasonable professional costs and expenses) suffered or incurred by Cheerful 21<sup>st</sup> arising out of or in connection with any claim made against Cheerful 21<sup>st</sup> for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Cheerful 21<sup>st</sup>'s use of the Goods specification. This clause shall survive termination of this Agreement.

**3. CLIENT OBLIGATIONS**

- 3.1 The Client shall:
  - 3.1.1 ensure that the terms of the order and any information it provides in the Service Specification, any Goods specification or in connection with the Goods and/or Services are complete and accurate;
  - 3.1.2 co-operate with Cheerful 21<sup>st</sup> in all matters relating to the Goods and/or Services;
  - 3.1.3 provide Cheerful 21<sup>st</sup>, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by Cheerful 21<sup>st</sup> as may be reasonably necessary to provide the Goods and/or Services;
  - 3.1.4 provide Cheerful 21<sup>st</sup> with such information and materials as Cheerful 21<sup>st</sup> may reasonably require in order to supply the Goods and/or Services, and ensure that such information is complete and accurate in all material respects;
  - 3.1.5 prepare the Client's premises for the supply of the Goods and/or Services, where applicable;
  - 3.1.6 obtain and maintain all necessary licenses, permissions and consents which may be required for the Goods and/or Services before the date on which the Goods and/or Services are to start, unless otherwise agreed by the Parties;
  - 3.1.7 comply with all applicable laws, including health and safety laws;

- 3.1.8 keep all materials, equipment, documents and other property of Cheerful 21<sup>st</sup> at the Client's premises or at the Event location in safe custody at its own risk, maintain Cheerful 21<sup>st</sup> materials in good condition until returned to Cheerful 21<sup>st</sup>, and not dispose of or use Cheerful 21<sup>st</sup> materials other than in accordance with Cheerful 21<sup>st</sup>'s written instructions or authorization; and
- 3.1.9 comply with any additional obligations as set out in the Service Specification, the Goods specification or reasonably required by Cheerful 21<sup>st</sup> in connection with the proper provision of the Goods and/or Services or to enable full compliance with the terms of this Agreement.
- 3.2 The Client shall afford to Cheerful 21<sup>st</sup> all reasonable cooperation in all matters relating to the performance of Cheerful 21<sup>st</sup>'s obligations under this Agreement. In particular but without limitation to the foregoing, the Client shall:-
  - 3.2.1 promptly and fully respond to all communications of Cheerful 21<sup>st</sup> relating to the provision of the Goods and/or Services and ensure (if applicable) that appropriate and suitably qualified members of the Client's staff or the Client's nominated or authorized representative are at all reasonable times available to liaise with Cheerful 21<sup>st</sup> on matters relevant to the provision of the Goods and/or Services;
  - 3.2.2 obtain or assist Cheerful 21<sup>st</sup> to obtain at the Client's cost all necessary licenses and consents required or reasonably necessary to enable Cheerful 21<sup>st</sup> to properly and lawfully provide the Goods and/or Services to the Client;
  - 3.2.3 conduct its affairs at all times in a proper and reputable manner observing all legal requirements in relation to its business and the applicable law in respect of the Goods and/or Services;
  - 3.2.4 provide proper and clear instructions to Cheerful 21<sup>st</sup> in respect of its requirements in relation to the Goods and/or Services, any Additional Services, any agreed deliverables or in connection with this Agreement;
  - 3.2.5 to promptly pay the fees due to Cheerful 21<sup>st</sup> when due and if not paid on the due date to pay such applicable default interest at the specified rate set out in this Agreement from time to time in force.
- 3.3 Throughout the Term of this Agreement:-
  - 3.3.1 The Client shall afford Cheerful 21<sup>st</sup> such access to the Client's information or records and other materials relevant to the Goods and/or Services as Cheerful 21<sup>st</sup> may reasonably require in connection with or to provide the Goods and/or Services;
  - 3.3.2 The Client shall assume primary responsibility for complying with all laws and regulations in connection with the collection, use and disclosure of data under or pursuant to this Agreement and shall comply with all relevant legislation including the data protection legislation or equivalent (where applicable);
  - 3.3.3 Cheerful 21<sup>st</sup> may elect to suspend the provision of the Goods and/or Services if the Client is in breach of the provisions of this Agreement and may at its entire discretion first serve notice of its intention to suspend provision of the Goods and/or Services and allow the Client seven (7) days to remedy such breach failing which the Goods and/or Services shall be suspended without prejudice to the payment obligations and liability of the Client.
  - 3.3.4 Cheerful 21<sup>st</sup> does not warrant, guarantee or undertake on behalf of any third-party supplier or service provider that access to any facilities or any products or services will be uninterrupted or of any particular level of availability or quality.
- 4. **GOODS AND/OR SERVICES**
  - 4.1 Cheerful 21<sup>st</sup> warrants to the Client that:
    - 4.1.1 Cheerful 21<sup>st</sup> will supply the Goods and perform the Services with reasonable care and skill and in accordance with generally recognized commercial practices and standards in the industry for similar services;
    - 4.1.2 the Goods and/or Services will conform with all descriptions and specifications provided in writing to the Client by Cheerful 21<sup>st</sup>, including the relevant Service Specification;

- 4.1.3 the Goods (including any Event exhibition stand) to be supplied as part of the Goods and/or Services will be of good construction, suitable and sound material and adequate strength, and have been tested prior to delivery to the Client;
- 4.1.4 the Goods to be supplied as part of the Goods and/or Services will be free from defects in design, material and workmanship for a period of twelve (12) months from delivery;
- 4.1.5 the Goods and/or Services shall not breach or infringe any Intellectual Property Rights (as defined below), or any other right, title, or interest, of any third party;
- 4.1.6 it will use reasonable endeavors to seek to obtain all the rights, licenses, permits, approvals and clearance of third-party rights as required by law, and as are reasonably necessary to perform its obligations under this Agreement; and
- 4.1.7 the Goods and/or Services will be provided in accordance with applicable legislation from time to time in force.
- 4.1.8 Cheerful 21<sup>st</sup> reserves the right to amend the Goods specification if required by any applicable statutory or regulatory requirement, and Cheerful 21<sup>st</sup> shall notify the Client in any such event.
- 4.1.9 Cheerful 21<sup>st</sup> shall deliver the Goods to the location set out in this Agreement or such other location as the parties may agree at any time after Cheerful 21<sup>st</sup> notifies the Client that the Goods are ready.
- 4.1.10 Delivery of the Goods shall be completed on the completion of unloading or building of the Goods at the agreed delivery location for the Event.
- 4.1.11 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Cheerful 21<sup>st</sup> shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Client's failure to provide Cheerful 21<sup>st</sup> with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.1.12 If the Client fails to take or accept delivery of the Goods within three (3) business days of Cheerful 21<sup>st</sup> notifying the Client that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Cheerful 21<sup>st</sup>'s failure to comply with its obligations under this Agreement in respect of the Goods:
  - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third (3<sup>rd</sup>) business day following the day on which Cheerful 21<sup>st</sup> notified the Client that the Goods were ready; and
  - (b) Cheerful 21<sup>st</sup> shall store the Goods until delivery takes place, and charge the Client for all related costs and expenses (including insurance).
- 4.1.13 If ten (10) business days after the day on which Cheerful 21<sup>st</sup> notified the Client that the Goods were ready for delivery the Client has not taken or accepted delivery of them, Cheerful 21<sup>st</sup> may charge the Client for the price of the Goods.
- 4.1.14 Subject to clause below, Cheerful 21<sup>st</sup> shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
  - (a) the Client gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause above;
  - (b) Cheerful 21<sup>st</sup> is given a reasonable opportunity of examining such Goods; and
  - (c) the Client (if asked to do so by Cheerful 21<sup>st</sup>) returns such Goods to Cheerful 21<sup>st</sup>'s place of business at the Client's cost.
- 4.1.15 Cheerful 21<sup>st</sup> shall not be liable for the Goods' failure to comply with the warranty in if:
  - (a) the Client makes any further use of such Goods after giving a notice in accordance with the clause above;

- (b) the defect arises because the Client failed to follow Cheerful 21<sup>st</sup> 's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of Cheerful 21<sup>st</sup> following any drawing, design or Goods Specification supplied by the Client;
- (d) the Client alters or repairs such Goods without the written consent of Cheerful 21<sup>st</sup>;
- (e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from their description or the Goods specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

4.1.16 Except as provided in this clause, Cheerful 21<sup>st</sup> shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in this clause.

Additional Services

4.2 The Client may, from time to time, request that Cheerful 21<sup>st</sup> provides any additional services (other than the initial Services forming part of the Goods and/or Services) agreed by Cheerful 21<sup>st</sup> as set out in Schedule 1 in writing to be provided by Cheerful 21<sup>st</sup> to the Client, as agreed by the parties (**Additional Services**).

4.3 Cheerful 21<sup>st</sup> may respond to such a request within ten (10) business days of receiving it, notifying the Client if it agrees to provide such Additional Services and providing a quote for the applicable fees for the Additional Services. If Cheerful 21<sup>st</sup> does not agree to provide the Additional Services, it shall as soon as reasonably practicable notify the Client that it does not agree to provide the Additional Services.

4.4 Cheerful 21<sup>st</sup> shall in its sole discretion be entitled to decide whether or not it shall provide the Additional Services but shall not unreasonably delay its agreement to provide Additional Services. The fees payable in consideration for the performance of any Additional Services if agreed to be provided by Cheerful 21<sup>st</sup> will be as quoted by Cheerful 21<sup>st</sup> or otherwise agreed by the parties in writing.

Multiple Event Storage Services

4.5 Where there are multiple Events, Cheerful 21<sup>st</sup> shall (if agreed in writing) securely store the Event infrastructure, deliverables, and all ancillary materials and equipment, between the Events at the Client's cost and expense. Following the end of each Event, Cheerful 21<sup>st</sup> shall prepare the Event infrastructure for the next Event, including, for example, stripping existing walls of graphic material, and shall at the Client's additional cost fix any defects in the Event infrastructure, deliverables and all ancillary materials and equipment prior to transporting them to the venue for each Event.

5. **CONFIDENTIALITY**

5.1 Each Party undertakes to the other to maintain total confidentiality and security all of the other Party's confidential information made available it in connection with this Agreement and the Goods and/or Services, including but not limited to, all presentations, conferences, programs, speeches, productions, designs, business or sensitive information, trade secrets, secret or confidential material, operations, processes or dealings concerning the organization, business, finance transactions or affairs of the disclosing Party ("**Confidential Information**"), which may come to the knowledge of the other Party in connection with this Agreement or during the delivery of the Goods and/or Services.

5.2 Each party undertakes that it shall not at any time during the Term of this Agreement, and for a period of five (5) years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, clients or suppliers of the other Party, except as permitted by clause this Agreement.

5.3 Each Party may disclose the other Party's confidential information:

5.3.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 5; and

5.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

5.4 Neither Party shall use the other party's Confidential Information in any way whatsoever without the prior written consent of that other Party other than for the delivery of the Goods and/or Services and performance of its obligations under this Agreement.

## 6. DATA PROTECTION

"**Applicable Laws**" means all applicable laws, statutes, regulations and codes from time to time in force.

"**Data Protection Legislation**" means the New York Stop Hacks and Improve Electronic Data Security Act ("SHIELD Act"), the UK Data Protection Legislation, and any other applicable state and federal legislation relating to personal data still in force and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

6.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

6.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and Cheerful 21st is the processor.

6.3 Without prejudice to the generality of clause 6.1, each Party shall, in relation to any personal data processed in connection with their obligations under this Agreement:

6.3.1 process such personal data only on the documented written instructions of the controller Party unless the other Party is required by Applicable Laws to otherwise process that personal data.

6.3.2 ensure that it has in place appropriate technical and organizational measures, to protect against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorized or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymizing and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organizational measures adopted by it);

6.3.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

6.3.4 assist the other Party in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

6.3.5 notify the other Party without undue delay on becoming aware of a personal data breach;

6.3.6 at the written direction of the other Party delete or return personal data and copies thereof to the other Party on termination of this Agreement, unless required by Applicable Law to store the personal data;

6.3.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and immediately inform the other Party if, in the opinion of the other Party, an instruction infringes the Data Protection Legislation; and

6.3.8 indemnify the other Party against any loss or damage suffered by the other Party in relation to any breach by that Party of its obligations under this clause 6.

7. **CLIENT MATERIAL & INTELLECTUAL PROPERTY**

“**The Client Material**” means all documents, information, items and materials in any form (whether owned by the Client), which are provided by or on behalf of the Client to Cheerful 21<sup>st</sup> in connection with the provision of the Goods and/or Services.

“**Intellectual Property Rights**” means all intellectual property rights, howsoever arising and in whatever media, whether or not registered or capable of registration, including copyright, database rights, know-how, patents, trademarks, service marks, trade names, goodwill, design rights, moral rights, business names, domain names and other similar rights, and any applications for the protection or registration of these rights, all renewals and extensions of such rights throughout the world, and all similar or equivalent rights, or forms of protection, which subsist now, or in the future, in any part of the world.

7.1 **In relation to Client Material:**

7.1.1 the Client and its licensors shall retain ownership of all Intellectual Property Rights in the Client Material; and

7.1.2 the Client grants to Cheerful 21st a fully paid-up, non-exclusive, royalty-free, non-transferable license to copy, use and modify the Client Material for the Term for the sole purpose of providing the Goods and/or Services to the Client and in connection with the obligations under or pursuant to this Agreement.

7.2 Cheerful 21st warrants that the receipt and use of the Goods and/or Services (excluding the Client Material) by the Client following supply or delivery shall not infringe the rights, including any Intellectual Property Rights, of any third party.

8. **FORCE MAJEURE**

In this paragraph, “**Force Majeure Event**” means any acts, events, omissions or accidents beyond Cheerful 21<sup>st</sup>’s reasonable control, including without limitation, acts of God, flood, fire, earthquake, hurricane, tornado, storm, extreme temperatures, epidemics or pandemics (whether or not declared by the World Health Organization), or other similar catastrophes, and other major weather conditions, server crashes, virus attacks on equipment, tempest, accident, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bylaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, damage, bad weather, software power or equipment failure, explosion, threat of war, acts of war or terrorism, riots and strikes, lockouts or other industrial disputes not involving the personnel of the affected party.

8.1 Cheerful 21st will not be deemed to be in breach of this Agreement, or otherwise liable to the other Party, for any delay in performance, or any failure to perform any obligations under this Agreement (and the time for performance shall be extended accordingly), if, and to the extent that, the delay or failure is caused by a Force Majeure Event, provided that the Cheerful 21st whose performance is affected has complied with clause 8.2.

8.2 Cheerful 21st shall: (i) promptly as soon as reasonably practicable notify the Client in writing of the nature and extent of the circumstances giving rise to the Force Majeure Event, the likely or potential duration of the Force Majeure Event, and the effect of the Force Majeure Event on its ability to perform its obligations; and (ii) in so far as it is able, use all its reasonable endeavors to seek to avoid and mitigate the effects of the Force Majeure Event.

8.3 Notwithstanding the generality of the foregoing, each party shall use all reasonable endeavors to continue to perform its obligations under this Agreement for the duration of any Force Majeure Event.

9. **LIABILITY LIMITATION - THE CLIENT’S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

9.1.1 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), indemnity, misrepresentation, restitution or otherwise.

9.2 Neither Party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its willful default.



- 9.3 Cheerful 21<sup>st</sup>'s total liability to the Client howsoever arising under, pursuant or in connection with this Agreement, shall not in any circumstances exceed the total sum of fees actually paid by the Client to Cheerful 21<sup>st</sup> in respect of the provision of the Goods and/or Services to the Client in the contract year period of twelve (12) month in which the breach occurred.
- 9.4 Cheerful 21<sup>st</sup>'s total liability to the Client in respect of all breaches occurring within any contract year shall not exceed the cap.
- 9.5 In this clause 9:
- 9.5.1 **cap.** means the cap is the lesser of the actual liability amount and one hundred per cent (100%) of the total charges in this Agreement year in which the breaches occurred;
- 9.5.2 **contract year.** means a twelve (12) month period commencing with the Commencement Date or any anniversary of it; and
- 9.5.3 **total charges.** means the total charges and sums actually paid by the Client to Cheerful 21<sup>st</sup> under this Agreement in respect of the Goods and/or Services actually supplied by Cheerful 21<sup>st</sup>, whether or not invoiced to the Client.
- 9.6 This clause sets out specific heads of excluded loss for the avoidance of doubt. The types of loss listed in clause below are wholly excluded by Cheerful 21<sup>st</sup>. The following types of loss are wholly excluded: loss of profits; loss of sales or business; loss of agreements or contracts; losses incurred by the Client arising out of or in connection with any third party claim against the Client; loss of anticipated savings; loss of use or corruption of software, data or information; wasted expenditure; loss of or damage to goodwill; indirect or consequential loss; and incidental, consequential or punitive damage.
- 9.7 Cheerful 21<sup>st</sup> has given commitments as to compliance of the Goods and/or Services with relevant specifications in this Agreement. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 9.8 Unless the Client notifies Cheerful 21<sup>st</sup> that it intends to make a claim in respect of an event within the notice period, Cheerful 21<sup>st</sup> shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred or the Client having grounds to make a claim in respect of the event and shall expire two (2) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 9.9 This clause 9 shall survive termination of this Agreement
10. **CANCELLATION AND TERMINATION**
- 10.1 This Agreement shall terminate automatically on completion of the project following provision of the Goods and/or Services in accordance with the Service Specification or any agreed project plan, other than provisions which survive or are capable of surviving termination.
- 10.2 Either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- 10.2.1 the other Party's financial position demonstrably deteriorates to such an extent that in the reasonable opinion of that party, the other Party's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy;
- 10.2.2 the other Party commits a material breach of this Agreement or persistent breaches of this Agreement.
- 10.2.1 If the Event is cancelled or postponed, the Client may cancel this Agreement, however, Cheerful 21<sup>st</sup> reserves the right and shall be entitled to retain deposit payments received to the date of cancellation. In addition, further fees shall be due and payable to Cheerful 21<sup>st</sup> by the Client, notwithstanding any other provision to the contrary, depending on the proximity of cancellation to the Event as follows:
- Within thirty (30) days of the start of the event – one hundred per cent (100%) of the agreed budget plus all PCNs;

Within sixty (60) days of the start of the event – ninety-five per cent (95%) of the agreed budget plus all PCNs;

Within ninety (90) days of the start of the event – eighty per cent (80%) of the agreed budget plus all PCNs.

Within one hundred and eighty (180) days of the start of the event – sixty per cent (60%) of the agreed budget plus all PCNs.

Over one hundred and eighty (180) days from the start of the event – fifty per cent (50%) of the agreed budget plus all PCNs.

- 10.3** Without prejudice to any other rights or remedies which the parties may have, either Party may terminate this Agreement immediately on giving written notice to the other if:
- 10.3.1** the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or is deemed unable to pay its debts as under applicable bankruptcy law;
  - 10.3.2** the other Party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors; or
  - 10.3.3** the commencement of any insolvency or bankruptcy proceedings against the other Party; or
  - 10.3.4** the entry of a judicial decree or order against the other Party under any bankruptcy law, or the appointment of a receiver, liquidator, trustee or similar official for the other Party; or
  - 10.3.5** the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 10.4** On termination of this Agreement for any reason, Cheerful 21<sup>st</sup> shall upon written request from the Client, as soon as reasonably practicable deliver to the Client:
- 10.4.1** all the Client Material and all copies of information and data provided by the Client to Cheerful 21<sup>st</sup> for the purposes of this Agreement. Cheerful 21<sup>st</sup> shall not retain any copies of the Client Material, except for one copy which Cheerful 21<sup>st</sup> may use for audit purposes only and subject to the confidentiality obligations set out in this Agreement; and
  - 10.4.2** all specifications and other documentation comprised in any paid for deliverables and existing at the date of such termination, whether or not then complete.
- 10.5** On termination of this Agreement:
- 10.5.1** the Client shall immediately pay to Cheerful 21<sup>st</sup> all of Cheerful 21<sup>st</sup>'s outstanding unpaid invoices and interest and, in respect of the Goods and/or Services supplied but for which no invoice has been submitted, Cheerful 21<sup>st</sup> shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - 10.5.2** the Client shall return all of Cheerful 21<sup>st</sup> materials and any deliverables or Goods which have not been fully paid for. If the Client fails to do so, then Cheerful 21<sup>st</sup> may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement.
- 10.6** Termination or expiry of this Agreement shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.
- 10.7** On termination of this Agreement (however arising) the accrued rights and liabilities of the Parties as at termination, and clauses capable or intended to survive termination, shall survive and continue in full force and effect.
- 10.8** Any provision of this Agreement that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

**11. NON-SOLICITATION**

Neither party shall, during the term, and for a period of six (6) months following the termination or expiry of this agreement, directly or indirectly induce, or attempt to induce, any of the other party's personnel who have been engaged in the provision, receipt, review or management of the goods and/or services under, or otherwise in connection with, this agreement, to leave the employment of the other party. Nothing in this clause will prevent either party from employing any of the other party's personnel who respond unsolicited to a general recruitment advertisement or campaign demonstrably carried out in good faith and not intended to circumvent the operation of this non-solicitation provision.

**12. PUBLICITY**

Cheerful 21<sup>st</sup> shall be entitled in any manner to advertise or publish the fact that Cheerful 21<sup>st</sup> has entered into this agreement and supplied goods and/or services to the client in connection with the event, including by way of announcement, press release, communication or statement made to any third party by Cheerful 21<sup>st</sup>, through any means or medium (including but not limited to social media) for the purposes of updating its portfolio services experience or corporate curriculum vitae or as required by law or applicable regulation, or the valid order of a court of competent jurisdiction, or the request or direction of any governmental or other regulatory authority or agency or securities exchange (whether or not such requirement for information has the force of law).

**13. WAIVER**

The waiver or non-enforcement by a Party of any breach, right or remedy or non-observance of the provisions of this Agreement shall not prevent the subsequent enforcement of such provisions in full and shall not be deemed a waiver of any subsequent breach.

**14. VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of both Parties.

**15. ASSIGNMENT**

**15.1** The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

**16. INSURANCE**

**16.1.1** During the Term of this Agreement and if required by the Client in writing, then for a period of one (1) year thereafter, Cheerful 21<sup>st</sup> shall maintain in force, with a reputable insurance company, the following insurance:

**16.1.2** professional indemnity insurance and errors and omissions insurance with an adequate indemnity limit, which shall not be less than three million dollars (\$3,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate;

**16.1.3** product liability insurance of ten million dollars (\$10,000,000);

**16.1.4** public liability insurance with an adequate limit, which shall not be less than ten million dollars (\$10,000,000); and

**16.1.5** employer's liability cover of ten million dollars (\$10,000,000).

**17. SEVERANCE**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

**18. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, nor constitute any Party the agent of another Party, or authorize any Party to make or enter into any commitments for or on behalf of any other Party.

**19. NOTICES**

**19.1** Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing and shall be:

**19.1.1** delivered by hand or by pre-paid first-class post or other next business day delivery service at its principal place of business; or

**19.1.2** sent by fax to its main fax number or sent by email to the address of the relevant contact at the other Party or a director of that Party.

**19.2** Any notice or communication shall be deemed to have been received:

**19.2.1** if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address; and

**19.2.2** if sent by pre-paid first-class post or other next business day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service ; and

**19.2.3** if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

**19.3** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**20. THIRD PARTY RIGHTS**

Except as specifically set forth herein, nothing herein shall confer on any third party any benefit or the right to enforce any term of this agreement.

**21. LAW AND JURISDICTION**

**21.1** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contentious disputes and or claims) shall be governed and construed in accordance with the laws in effect in the State of New York, excluding any choice of law principle that might otherwise refer interpretations of this Agreement to the laws of another jurisdiction.

**21.2** The Parties hereto specifically and irrevocably consent to the jurisdiction and venue of the federal and state courts of the State of New York with respect to all matters concerning this Agreement or the enforcement of any of the foregoing.

**21.3** Nothing in this Agreement shall limit the right of Cheerful 21<sup>st</sup> to take proceedings in any other court of competent jurisdiction or in more than one jurisdiction, whether concurrently or not.