STANDARD TERMS OF BUSINESS

These Standard Terms of Business are deemed to form part of the Agreement to which they are expressly incorporated.

1. In these Standard Terms of Business the following Terms shall have the following meanings unless the context otherwise requires):
1.1.1 'The Agreement' means an Agreement between the Company and the Client for the provision of the Services and for the period agreed therein.
1.1.2 'The Company' means Carousel Marketing Limited.
1.1.3 'The Client' means the individual or company who is a party to the Agreement to which these Terms and conditions are incorporated.
1.1.4 'Created Work' means any work or product created by or on behalf of the Company for the Client in connection with and for the purpose of the provision of the Services. Such Created Work includes (but is not limited to) database design and management, creative design, new media, corporate identity work, public relations work, advertising material and associated work, exhibition and event planning and website design.
1.1.5 "Data Controller", "Personal Data" and "Processing" have the same meanings as set out in the Data Protection Act;
1.1.6 "Data Protection Act" means the Data Protection Act 1998;
1.1.7 "New Data" means any data or information (including Personal Data) collected or generated during the performance of the Services by the Company or the Client;
1.1.8 "Regulations" means the Privacy and Electronic Communications (EC Directive) 2003;
1.1.9 'Services' means the services provided by the Company to the Client in accordance with the Agreement.
1.2 The headings in these Standard Terms of Business are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the Terms.
1.3 .Reference to any statute or statutory provision includes a reference to:
(a) that statute or statutory provision as from time to time amended extended re-enacted or consolidated; and
(b) all statutory instruments or orders made pursuant to it.
1.4 Words denoting the singular shall include the plural and vice versa.
1.5 Words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa.
1.6 References to "Terms" are to the Terms of these Standard Terms of Business.
1.7 References to "terms" are to terms to which the Client or the Company are a party to in connection with the Agreement and includes the Terms.

2. Incorporation of the Standard Terms of Business
These Standard Terms of Business are incorporated into the Agreement and form part of it.

3. Co-operation
The Company will co-operate fully with the Client so far as is reasonably possible. The Client agrees to assist the Company in the performance of the Services by making available to the Company all relevant information and executive time as required.

4. Disbursements and Expenses
Any additional expenses and disbursements requested by the Client and not included in the Agreement shall be invoiced and payable separately by the Client and in addition to any price stated in the Agreement.

5. Payment Terms
5.1 The costs of the Services are set out in the Agreement
5.2 Any costed items set out in the Agreement are estimated and may be subject to an increase. Written approval will be obtained prior to expenditure.
5.3 Fees and costs estimates have been calculated on the basis of information supplied by the Client. If the information supplied is incomplete or misleading or the Client's plans are subsequently amended, leading to an increase in the work required in the provision of the Services the Company reserves the right to increase the fees accordingly in these circumstances subject to the Client's written approval.
5.4 The Company shall invoice the Client for the costs of the Services following the completion of the Services.
5.5 Payment must be received no later than 30 days from and including the date of invoice.
5.6 Time for payment shall be of the essence.
5.7 No payment shall be deemed to have been received until the Company has received clear funds.
5.8 All sums payable under the Agreement shall be paid in full without deduction, withholding or set-off and are exclusive of VAT and any other duty or tax which shall be payable by the Client unless otherwise stated.
5.9 Overdue payments shall attract interest at an annual rate of 4% above the prevailing base rate of the Company's clearing bank. Interest shall accrue on a daily basis from the date payment becomes due until the Company has received payment of the overdue amount together with all accrued interest.
5.10 The Company and/or persons or companies acting on its behalf or as its agents reserve the right to charge and recover all costs incurred in connection with the pursuance and/or recovery of outstanding sums due under the Agreement.
5.11 The Company's rights in Terms 5.9 and 5.10 shall be in addition to and without prejudice to all other remedies available to the Company.
5.12 If exchange rate fluctuations cause the cost to the Company of materials or services purchased overseas for the purposes of providing the Services to differ from the cost anticipated when the Company ordered the relevant materials or services (or obtained the Client's approval for such costs), the Company shall charge the Client at the exchange rate on the date the Company pays for the relevant materials or services, applying the closing mid-point rate in London for that day as quoted in the next edition of the Financial Times.

6. Database Design and Management
6.1 Where the Services include database design and / or management the following Terms shall apply:
6.1.1 If the Client provides the Company with all Personal Data for the purpose of creating a database for the Client's sole use then the intellectual property rights and any copyright subsisting in that database and the Personal Data shall be owned by the Client
6.1.2 Where the Services include the use of a database owned and operated by the Company for the purpose of conducting the Services on behalf of the Client that database and the intellectual property rights and any copyright subsisting in it and any Personal Data or New Data shall be owned by the Company. Term 6.1.5 shall apply to this Term 6.1.2.
6.1.3 Where the Services include the use of a database owned by the Client but managed by the Company for the purpose of conducting the Services then that database and any intellectual property rights or copyright subsisting in it and in any Personal Data and New Data shall be owned by the Client.
6.1.4 Where Term 6.1.2 applies and the Client provides the Company with any Personal Data and/or where New Data is acquired the intellectual property rights and any copyright subsisting that data are owned by the Client and the Client grants to the Company an irrevocable royalty free non-exclusive licence to use that Personal Data and New Data.
6.1.5 The Company is not under any obligation to provide the Client with a copy of any database or any part thereof falling within Term 6.1.2. Where the Company in its absolute discretion allows the Client to have a copy of a database the Company reserves the right to limit the content and extent of the database available for viewing by the Client and in any event only a summary of the database may be provided, which shall not include any postal address details or email address details. For the avoidance of doubt any information contained in a database falling within Term 6.1.2, including the database itself, shall be the confidential information of the Company and the provisions of Term 11 shall apply.

7. Amendment and Cancellation
7.1 Any request by the Client to amend or halt any plans or to cancel work in progress in connection with the Company's provision of the Services, shall be implemented by the Company as far as this is possible within the terms of its contractual obligations to suppliers. The Client shall be responsible for any costs or expenses incurred or to which the Company is committed prior to, or as a result of, the cancellation or amendment and which cannot be recovered by the Company. The Client shall pay the Company's fees covering the cancelled or amended Services, as well as any charges raised by third parties arising from the cancellation or amendment.
7.2 Where the Client requests the Company to halt or delay the provision of the Services (for whatever reason) the Company reserves the right to review and increase the costs of the Services and/or any quotation provided to the Client in respect of such Services.

8. Created Work
8.1 No amendments to any Created Work may be made without the Company's prior written consent. Any agreed amendments shall only be carried out by the Company or under its supervision and shall be paid for in a manner agreed between the Client and the Company in writing in advance. Where applicable, reprints obtained by the Client shall not differ in any way from the originals supplied without the Company's written consent.
8.2 Created Work shall not be used by the Client for any purpose other than that for which it was created, and no work in draft or incomplete form shall be used or published as finished work without the Company's written consent.
8.3 Subject to Term 6 above and unless expressly stated otherwise in the Agreement the worldwide copyright and intellectual property rights in the Created Work belong to the Company and the Company grants to the Client a royalty free licence for the Client to use the Created Work for the period agreed in the Agreement or if no such period is stated until such licence is revoked.
8.4 In the event that any Created Work includes material the rights in which are owned by a third party, the Company shall grant to the Client (at the Client's expense) only such rights as the third party permits the Company to grant to the Client.
8.5 Created Work is at the risk of the Client from the time of delivery.
8.6 Subject to Term 8.3, any ownership of Created Work shall not pass to the Client until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
a) the Created Work; and
b) all other sums which are or which become due to the Company from the Client on any account.
8.7 Until ownership of the Created Work has passed to the Client, the Client shall:
a) hold the Created Work on a fiduciary basis as the Company's bailee;
b) store the Created Work (at no cost to the Company) separately from all other goods of the Client or any third party in such a way that they remain readily identifiable as the Company's property;
c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Created Work; and
d_maintain the Created Work in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Client shall produce the policy of insurance to the Company.
8.8 The Clients's right to possession of the Created Work shall terminate immediately if:
a) the Client has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Client or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client; or
b) the Client suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against it, or fails to observe or perform any of its obligations under the Agreement or any other contract between the Company and the Client or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Client ceases to trade; or
c) the Client encumbers or in any way charges any of the Created Work.
8.9 The Company shall be entitled to recover payment for the Created Work notwithstanding that ownership of any of the Created Work has not passed from the Company.
8.10 The Client grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Created Work is or may be stored in order to inspect them, or, where the Client's right to possession has terminated, to recover them.
8.11 Where the Company is unable to determine whether any Created Work in respect of which the Client's right to possession has terminated, the Client shall be deemed to have sold all Created Work of the kind supplied by the Company to the Client in the order in which they were invoiced to the Client.
8.12 On termination of the Agreement this Term 8 shall remain in effect.

9. The Data Protection Act and the Regulations
9.1 Any data (including Personal Data) and any intellectual property rights subsisting in it acquired and collected by the Company solely for purpose of providing the Services to the Client shall remain at all times the property of the Client and the Client shall act as the Data Controller for such data.
9.2 Subject to Term 6 any data including Personal Data and any intellectual property rights subsisting in it provided by the Client to the Company solely for purpose of enabling the Company to carry out the Services to the Client shall remain at all times the property of the Client and the Client shall act as the Data Controller for such data.
9.3 Any New Data and any intellectual property rights subsisting in it collected for the sole purpose of providing the Services to the Client shall be owned by the Client and the Company hereby assigns with full title guarantee to the Client all intellectual property rights in the New Data.
9.4 The Company shall have a royalty-free non-exclusive license from the Client to process Personal Data for the purpose of providing the Services.
9.5 For the purposes of any Personal Data processed during the performance of the Services the Company shall be the Data Processor of that Personal Data and the Client shall be the Data Controller.
9.6 For the purposes of the Regulations any relevant Services performed by the Company shall be conducted on behalf of the Client and thereby instigated by the Client for the purposes of the Regulations.
9.7 The provisions of this Term 9 shall survive the expiry or termination of the Agreement.

10. Warranties
10.1 The Company shall provide the Services using reasonable care and skill and, in accordance with the Agreement.
10.2 The Client warrants that:
10.2.1 any Personal Data and New Data provided to the Company to enable and assist the Company in its provision of the Services and to be Processed for that purpose has been obtained in accordance with and in compliance with the Data Protection Act and all other applicable laws, enactments, regulations, orders, standards and other similar instruments;

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10.2.2 it shall ensure compliance with the Regulations when instructing the Company to conduct Services on its behalf;
10.2.3 it shall notify the Company promptly if the Client considers that any statement made in any document submitted by the Company to the Client for approval is incorrect or misleading in any way or may give rise to any claim or action for defamation or otherwise against the Company or the Client;
10.2.4 it has and maintains at all times any notification that may be required under the Data Protection Act and that such notification covers all data processing contemplated through the provision of the Services;
10.2.5 it has in place all procedures for the provision of information to Data Subjects about the processing of their Personal Data to ensure compliance with the Data Protection Act;
10.2.6 it obtains all the necessary consents required by the Data Protection Act for the processing of Personal Data in accordance with the Agreement; and
10.2.7 to the best of its knowledge and belief all information supplied to the Company before, during and after the Agreement shall be accurate and not in any way contrary to English law and that it is entitled to provide such information to the Company for its use without recourse to any third party.

11. Confidential Information
11.1 The parties agree to treat as secret and confidential and not at any time for any reason during or after the termination of the Agreement to disclose or permit to be disclosed or made use of any confidential information concerning the other's business customers, suppliers or associated companies which they may acquire in the course of the Agreement or any other information expressly identified as confidential information in these Terms.
11.2 For the avoidance of doubt, the restrictions in this Term 11 shall not prevent:
11.2.1 the disclosure or use of information in the proper performance of the Company's duties;
11.2.2 the disclosure of information if required by law; or
11.2.3 the disclosure of information which is already in the public domain otherwise than through unauthorised disclosure by the Company or the Client .
11.3 Nothing in the Agreement shall prevent the Company from using the name of the Client in any list of clients used by the Company for its own promotional purposes unless the Client has notified the Company in writing that it is unwilling for its name to be so used.
11.4 The provisions of this Term 11 shall survive the expiry or termination of the Agreement.

12 Limitation of Liability and Indemnity
12.1 The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any information or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
12.2 Except in respect of death or personal injury caused by the Company's negligence, or as expressly provided in these Terms and to the fullest extent permitted by law, the Company shall:
a) not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the provision of the Services; and
b) only be liable 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 Services to an amount limited to the price stated in the Agreement.
12.3 Where the Company supplies, in connection with the provision of the Services, any goods supplied by a third party, the Company does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the third party supplying the goods to the Company.
12.4 The Company shall not be liable for any loss, damage, costs, expenses or other claims for compensation arising from the Client's beach of the Data Protection Act.
12.5 The Company shall not be liable for any loss, damage, costs, expenses or other claims for compensation arising from the Client's or its employee's breach of the Regulations.
12.6 The Client shall indemnify and keep indemnified the Company from and against any and all damage, loss, costs, expenses (including legal costs and expenses) and liability whether civil or criminal which the Company may incur or suffer resulting from any act, omission, neglect or default of the Client or its agents, employees or licensees, or the infringement of the Regulations and the Data Protection Act or the infringement of any copyright and intellectual property rights of the Company or any third party or any successful claim for defamation, provided that such liability was not incurred by the Company through any default in performing its obligations.
12.7 The provisions of this Term 12 shall survive the expiry or termination of the Agreement.

13 Client's Property
The Company shall take reasonable care of any property belonging to the Client and made available to the Company for the purpose of providing the Services. Such property shall be at all times at the sole and entire risk of the Client, and the Company shall not be subject to any other liability for it.

14. Insurance of Created Work
14.1Created work retained by the Company shall at all times, while in the Company's possession, be insured by the Company against loss or damage.
12.2The Client shall insure Created Work against loss or damage when in transit between the Company and the Client or any third parties for the purposes of production or publication and when in the possession of those third parties.

15. Employee Poaching
15.1During the Agreement and for six months after its expiry or termination, neither the Company nor the Client shall, without the written consent of the other, solicit or entice (either directly or indirectly) or attempt to solicit or entice (or authorise the taking of such action by any other person) any person who is employed by the other or has been employed by the other during the preceding six months, and who has been involved with the Services provided under this Agreement, to terminate his or her employment with the other party.
15.2 If the Company consents to an employee joining the Client in the circumstances of Term 15.1, the Company may charge a fee in consideration for such consent equivalent to one-fifth of the annual salary to be paid by the Client to that employee. This shall be payable by the Client immediately upon presentation of an invoice by the Company. If the Company does not require the employee to complete the notice period contractually required of him, the Company reserves the right to charge the Client an additional fee equivalent to the salary payable by the Company for the period of uncompleted notice.
15.3 The provisions of this Term 15 shall survive the expiry or termination of the Agreement.

16 Termination

16.1 Either party may (without limiting any other remedy) at any time terminate the Agreement by giving written notice to the other if:
16.1.1 the other commits a material breach of these Terms and (if capable of remedy) fails to remedy the breach within 21 days after being required by written notice to do so; or
16.1.2 the other goes into liquidation, becomes bankrupt, has a receiver appointed, makes a composition or voluntary arrangement with creditors or administration, or a moratorium comes into force in respect of the other (within the meaning of the Insolvency Act 1986) or suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it.
16.2 Subject to Term 16.3 and save and except for increases made in accordance with Term 5.12, where the Company proposes an increase in any of the costs or expenses under the Agreement the Company will give the Client written notice of any such increase before the proposed date of the increase. If such increase is not acceptable to the Client, it may, within fourteen days of such notice being deemed to have been received in accordance with Term 21 terminate the Agreement by giving written notice to the Company.
16.3 Where the Company gives the Client notice of an increase falling within Term 16.2, and the increase does not affect all of the Services provided under the Agreement the Client's right to terminate under Term 16.2 shall only apply in respect of the Services affected provided that such Services are not material to the provision of the Services as a whole.
16.4 For the purposes of Term 16.1.1 (but without limitation) a breach of the following Terms by the Client shall constitute a material breach:
16.4.1 a breach of Term 5;
16.4.2 a breach of Term 10.2;
16.4.3 a breach of Term 11;
16.4.4 a breach of Term 15; and/or
16.4.5 a breach of Term 17.
16.5 A delay in the supply of the Services by the Company shall only constitute a material breach of the Contract if such delay exceeds a period of [Please insert days] and no other suitable remedy of that breach is available.
16.6 If any event of a force majeure continues for a period longer than two months, either party may terminate the Agreement with immediate effect on giving written notice to the other party and neither shall be liable to the other for such termination. In case of termination, any sums due to either of the parties shall be paid immediately.

17 Assignment
The Client may not assign, sub-license or sub-contract the Agreement any of its rights or obligations existing or arising under it without the prior written consent of the Company (such consent shall not be unreasonably withheld or delayed). The Company acknowledges that such assignment shall not affect the liability of the Company to fulfil its obligations in its provision of the Services.

18 Force Majeure
18.1 Neither party shall be liable to the other in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, namely circumstances beyond the control of either party which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, earthquake explosion, sabotage, embargo, riot, civil commotion or civil authority, including acts of local government and parliamentary authority, internet failure, server crashes and virus attacks on equipment.
18.2 Immediately upon becoming aware of any event of force majeure, the affected party shall notify the other party of the manner and extent to which its obligations are likely to be prevented or delayed, and the dates of performance of any obligations affected shall be postponed for so long as is made necessary by the event of force majeure.

19 Entire Agreement, Amendment, Waiver
19.1 The Agreement, these Terms and the documents referred to in them contain the whole agreement between the parties and supersede any previous agreement between them relating to the subject matter of the Agreement, whether written or oral. The parties acknowledge that neither of them has relied upon any representation, written or oral, of any person but only as expressly set out in the Agreement.
19.2 Any valid alteration to or variation of the Agreement must be in writing and signed on behalf of each of the parties by a duly authorised representative.
19.3 No failure of either party to enforce at any time or for any period any term or condition of the Agreement shall constitute a waiver of such term or of that party's right later to enforce all terms and conditions of the Agreement.

20 Severance
If any provision of the Agreement or these Terms is declared by any judicial or other competent authority to be illegal, void, voidable or otherwise unenforceable, or indication of the same is received by either of the parties from any relevant competent authority, such provision shall be deemed severed and the remaining Terms shall remain in full force and effect.

21 Notices
Any notice to be served on the other party shall by sent by recorded delivery, registered post, e-mail or fax. Notices sent by registered post or recorded delivery shall be deemed to be served within 72 hours of posting, and by e-mail or fax within 24 hours if sent to the correct e-mail or fax address of the addressee.

22 Disputes
In the event of a dispute or question arising between the parties, they may, if they agree to do so, refer the matter to the Chartered Institute of Marketing for its recommendations for resolving the dispute or question.

23 Proper Law and Jurisdiction
The Agreement is governed by and is to be construed in accordance with the laws of England and Wales and each party hereby irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales.

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