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Standard Form of Agreement for Graphic Design v1.1

Interpretation

- (1) **Supplier** means Warren Creative, whose registered office is at A2 Yeoman Gate, Yeoman Way, Worthing, West Sussex BN13 3QZ. VAT Registered No.750 2761 45.
- (2) **Client** means the person and/or company to whom the Quotation is addressed and/or for whom the Supplier has agreed to provide the Specified Service in accordance with these Conditions.

1. Proposal

The terms of the Proposal shall be effective for ninety (90) days after presentation to the Client. In the event this Agreement (“Agreement” means the entire content of this document) is not executed by the Client within the time identified, the Proposal, together with any related terms and conditions and Deliverables (“Deliverables” means the services and work product specified in the Proposal to be delivered by the Supplier to the Client, in the form and media specified in the Proposal), may be subject to amendment, change or substitution.

1.1 Stage 1

Following on from approved direction – original pitch designs including any Preliminary Works (“Preliminary Works” means all artwork including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by the Supplier and which may or may not be shown and or delivered to the Client for consideration but do not form part of the Final Artwork). All designs are presented as a pdf document and sent via email.

1.2 Stage 2

From Client Content (“Client / Client Content” means all materials, information, photography, writings and other creative content provided by the Client for use in the preparation of and/or incorporation in the Deliverables) supplied (in a digital format), the Supplier will work-up a first draft of the Project allowing for 2 sets of minor text changes. All designs are presented as a pdf document and sent via email.

1.3 Stage 3

On approval of Final Artwork (“Final Artwork” means all creative content developed or created by the Supplier, or commissioned by the Supplier, exclusively for the Project (“Project” means design, artwork and all relevant related creative services per project requirements) and incorporated into and delivered as part of the Final Deliverables, including and by way of example, not limitation, any and all visual designs, visual elements, graphic design, illustration, photography, typographic treatments and text, modifications to the Client content (the Supplier will proof read prior to handover to the Client for checking and final approval), and the Supplier’s selection, arrangement and co-ordination of such elements together with the Client content and/or third party materials) the Supplier will prepare artwork and hand over to the Client’s chosen printer or other party as advised by the Client. A duplicate DVD/CD is given to the Client for reference. This includes a full collect for output.

1.4 Stage 4

The Supplier will check digital and wet proofs with the Client and the Supplier will check the job on machine. The Supplier may check this stage and time is charged at £100 per hour. It would be advantageous for the Client (or other

such employee or consultant of the Client as advised) to also be present at this stage too.

The Supplier's estimate to create Final Artwork ready for printing does not include the provision of images. The Supplier charges £30-£50 per image with a standard hourly charge of £100 per hour for design (and design development) and £45 per hour for typesetting and image search time.

Advice and account management is included as part of the Supplier's service (unless there is a specific requirement that requires account management then the Supplier and the Client will agree a specific rate per hour.

2. Fees and Charges

2.1 Fees

In consideration of the Services ("Services" means all services and the work product to be provided to the Client by the Supplier as described and otherwise further defined in the Proposal) to be performed by the Supplier, the Client shall pay to the Supplier fees in the amounts and according to the payment schedule set forth in the Proposal, and all applicable sales, use or value added taxes, even if calculated or assessed subsequent to the payment schedule.

2.2 Expenses

The Client shall pay the Supplier's expenses incurred in connection with this Agreement as follows: reasonable incidental and out-of-pocket expenses including but not limited to costs for postage, shipping, overnight courier, models, copywriting and mileage reimbursement at 40 pence (british pound sterling) per mile with the Client's prior approval.

2.3 Additional Costs

The Project pricing includes the Supplier's fee only. Any and all outside costs including, but not limited to, equipment rental, photographer's costs and fees, photography and/or artwork licenses will be billed to the Client.

2.4 Invoices

All invoices are payable end of month plus thirty (30) days of receipt. A five (5) percent (5%) monthly service charge is payable on all overdue balances. Payments will be credited first to late payment charges and next to the unpaid balance. The Client shall be responsible for all collection or legal fees necessitated by late or default in payment. The Supplier reserves the right to withhold delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are conditioned upon receipt of payment in full which shall be inclusive of any and all outstanding additional costs.

3. Changes

3.1 General Changes

Unless otherwise provided in the Proposal, and except as otherwise provided for herein, the Client shall pay additional charges for changes requested by the Client which are outside the scope of the Services on a time and materials basis, at the Supplier's standard hourly rate of £100 (british pound sterling) per hour. Such charges shall be in addition to all other amounts payable under the Proposal, despite any maximum budget, contract price or final price identified therein. The Supplier may extend or modify any delivery schedule or deadlines in the Proposal and Deliverables as may be required by such Changes.

3.2 Substantive Changes

If the Client requests or instructs Changes that amount to a revision in or near excess of 30 percent (30%) of the time required to produce the Deliverables, and or the value or scope of the Services, the Supplier shall be entitled to submit a new and separate Proposal to the Client for written approval. Work shall not begin on the revised services until a fully signed revised Proposal is received by the Supplier.

3.3 Timing

The Supplier will prioritise performance of the Services as may be necessary or as identified, and will undertake commercially reasonable efforts to perform the Services within the time(s) identified. The Client agrees to review Deliverables within the time identified for such reviews and to promptly either, (i) approve the Deliverables in writing or (ii) provide written comments and/or corrections sufficient to identify the Client's concerns, objections or corrections to the Supplier. the Supplier shall be entitled to request written clarification of any concern, objection or correction.

The Client acknowledges and agrees that the Supplier's ability to meet any and all schedules is entirely dependent upon the Client's prompt performance of its obligations to provide materials and written approvals and/or instructions pursuant to the Proposal and that any delays in the Client's performance or Changes in the Services or Deliverables requested by the Client may delay delivery of the Deliverables. Any such delay caused by the Client shall not constitute a breach of any term, condition or the Supplier's obligations under this Agreement.

The Supplier acknowledges and agrees that the Client's ability to meet any and all schedules is entirely dependent upon the Supplier's prompt performance of its obligations to provide materials and/or instructions pursuant to the Proposal and that any delays in the Supplier's performance or Services may delay delivery of the Deliverables.

4. Client Responsibilities

The Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner: (a) co-ordination of any decision-making with parties other than the Supplier; (b) provision of the Client Content in a form suitable for reproduction (ie. Word document); and (c) final proof-reading and in the event that the Client has approved. the Supplier are not responsible for any errors, such as, by way of example, typographic errors or misspellings, that remain within the finished product and the Client shall incur the cost of correcting such errors (if required).

5. Accreditation / Promotions

All displays or publications of the Deliverables shall bear accreditation and/or copyright notice in the Supplier's name in the form, size and location as incorporated by the Supplier in the Deliverables, or as otherwise directed by the Supplier.

The Supplier retains the right to reproduce, publish and display the Deliverables in the Supplier's portfolio and website, and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses. Either party, subject to the other's reasonable approval, may describe its role in relation to the Project and, if applicable, the services provided to the other party on its website and in other promotional materials, and, if not expressly objected to, include a link to the other party's website.

6. Confidential Information

A Confidentiality Agreement may be signed between the Client and the Supplier covering each parties responsibilities and obligations for Confidential Information. Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party, including without limitation Preliminary Works ("Confidential Information"). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations except as may be required by a court or governmental authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

7. Relationship of the Parties

7.1 Independent Contractor

The Supplier is an independent contractor, not an employee of the Client or any company affiliated with the Client. The Supplier shall provide the Services under the general direction of the Client, but the Supplier shall determine, in the Supplier's sole discretion, the manner and means by which the Services are accomplished. This Agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement.

7.2 No Solicitation

During the term of this Agreement, and for a period of six (6) months after expiration or termination of this Agreement, both parties agree not to solicit, recruit, engage, or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire, or any other kind of basis, any employee of the other party, whether or not said person has been assigned to perform tasks under this Agreement. In the event such employment, consultation or work-for-hire event occurs, agrees that both parties shall be entitled to an agency commission to be the greater of, either (a) 25 percent (25%) of said person's starting salary, or (b) 25 percent (25%) of fees paid to said person if engaged with the other party as an independent contractor. In the event of (a) above, payment of the commission will be due within 30 days (30) of the employment starting date. In the event of (b) above, payment will be due at the end of any month during which the independent contractor performed services for either party, either party, in the event of non-payment and in connection with this section, shall be entitled to seek all remedies under law and equity.

7.3 No Exclusivity

The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. The Client is free to engage others to perform services of the same or similar nature to those provided by the Supplier, and the Supplier shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by the Supplier.

8. Warranties and Representations

8.1 By Client

The Client represents, warrants and covenants to the Supplier that (a) the Client owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the the Client Content, (b) to the best of the Client's knowledge, the Client Content does not infringe the rights of any third party, and use of the the Client Content as well as any Trademarks in connection with the Project does not and will not violate the rights of any third parties, (c) the Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party materials, and (d) the Client shall comply with all laws and regulations as they relate to the Services and Deliverables.

8.2 By the Supplier

(a) the Supplier hereby represents, warrants and covenants to the Client that the Supplier will provide the Services identified in this Agreement in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services. (b) the Supplier further represents, warrants and covenants to the Client that (i) except for Third Party materials and the Client Content, the Final Deliverables ("Final Deliverables" means the final artwork provided by the Supplier and accepted by the Client) shall be the original work of the Supplier and/or its independent contractors, (ii) in the event that the Final Deliverables include the work of independent contractors commissioned for the Project by the Supplier, the Supplier shall have secure agreements from such contractors granting all necessary rights, title, and interest in and to the Final Deliverables sufficient for the Supplier to grant the intellectual property rights provided in this Agreement, and (iii) to the best of the Supplier's knowledge, the Final Art provided by the Supplier and

the Supplier's subcontractors does not infringe the rights of any party, and use of same in connection with the Project will not violate the rights of any third parties. In the event either party or third parties modify (modify means to alter greatly from the Deliverables but does not restrict, for example, the use of an image in another presentation) or otherwise use the Deliverables outside of the scope or for any purpose not identified in the Proposal or this Agreement or contrary to the terms and conditions noted herein, all representations and warranties either party shall be void. (c) Except for the express representations and warranties stated in this agreement, either party makes no warranties whatsoever. either party explicitly disclaims any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose. Both parties warrant that each party duly complies with the laws of England and Wales including trademark and copyright legislation.

9. Indemnification / Liability

9.1 By the Client

The Client agrees to indemnify, save and hold harmless the Supplier from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of any breach of the Client's responsibilities or obligations, representations or warranties under this Agreement. Under such circumstances the Supplier shall promptly notify the Client in writing of any claim or suit; (a) the Client has sole control of the defense and all related settlement negotiations; and (b) the Supplier provides the Client with commercially reasonable assistance, information and authority necessary to perform the Client's obligations under this section. The Client will reimburse the reasonable out-of-pocket expenses incurred by the Supplier in providing such assistance.

9.2 By the Supplier

Subject to the terms, conditions, express representations and warranties provided in this Agreement, the Supplier agrees to indemnify, save and hold harmless the Client from any and all damages, liabilities, costs, losses or expenses arising out of any finding of fact which is inconsistent with the Supplier's representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct of the Client provided that (a) the Client promptly notifies the Supplier in writing of the claim; (b) the Supplier shall have sole control of the defense and all related settlement negotiations; and (c) the Client shall provide the Supplier with the assistance, information and authority necessary to perform the Supplier's obligations under this section. Notwithstanding the foregoing, the Supplier shall have no obligation to defend or otherwise indemnify the Client for any claim or adverse finding of fact arising out of or due to the Client Content, any unauthorised content, improper or illegal use, or the failure to update or maintain any Deliverables provided by the Supplier, the Client expects the Supplier to have adequate insurance for all eventualities that may arise in the normal course of trading.

9.3 Limitation of Liability

The Services and the work of the Supplier are sold "as is." In all circumstances, the maximum liability of either party, its directors employees, to the other party for damages for any and all causes whatsoever, and the other party's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the net profit of the Project. In no event shall either party be liable for any lost data or content lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by either party, even if either party has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.

10. Term and Termination

- 10.1 This Agreement shall commence upon date of signing and shall remain effective until the Services are completed and delivered.
- 10.2 This Agreement may be terminated at any time by either party giving thirty (30) days notice in writing, or the mutual agreement of the parties, or if any party: (a) becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or (b) breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within ten (10) days from receipt of written notice of such breach.
- 10.3 In the event of termination, the Supplier shall be compensated for the Services performed through the date of termination in the amount of (a) any advance payment, (b) a pro-rated portion of the fees due, or (c) hourly fees for work performed by the Supplier as of the date of termination, whichever is greater; and the Client shall pay all expenses, fees, out of pockets together with any Additional Costs incurred through and up to, the date of cancellation.
- 10.4 In the event of termination by the Client and upon full payment of compensation as provided herein, the Supplier grants to the Client such right and title of this Agreement with respect to those Deliverables provided to, and accepted by the Client as of the date of termination, and the Supplier will provide such assistance as it reasonably can to ensure a smooth handover.

11. Rights to Deliverables other than Final Art

- 11.1 **The Client Content**
The Client Content, including all pre-existing Trademarks, shall remain the sole property of the Client or its respective suppliers, and the Client or its suppliers shall be the sole owner of all rights in connection therewith. The Client hereby grants to the Supplier a non-exclusive, non-transferable license to use, reproduce, modify, display and publish the the Client Content solely in connection with the Supplier's performance of the Services and limited promotional uses of the Deliverables as authorised in this Agreement.
- 11.2 **Third Party Materials**
All Third Party Materials ("Third Party Materials" means proprietary third party materials which are incorporated into the Final Deliverables, including without limitation stock photography or illustration) are the exclusive property of their respective owners. The Supplier shall inform the Client of all Third Party Materials that may be required to perform the Services or otherwise integrated into the Final Artwork. Under such circumstances the Supplier shall inform the Client of any need to license, at the Client's expense, and unless otherwise provided for by the Client, the Supplier shall obtain the license(s) necessary to permit the Client's use of the Third Party Materials consistent with the usage rights granted herein. In the event the Client fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of third party art, the Client hereby indemnifies, saves and holds harmless the Supplier from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of the Client's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the Final Artwork.
- 11.3 **Preliminary Works**
The Supplier retains all rights in and to all Preliminary Works. The Client shall return all Preliminary Works to the Supplier within thirty (30) days of completion of the Services and all rights in and to any Preliminary Works shall remain the exclusive property of the Supplier.
- 11.4 **Original Artwork**
The Supplier retains all right and title in and to any original artwork comprising Final Artwork, including all rights to display such artwork. The Client shall return all original artwork to the Supplier within thirty (30) days of completion of the Services.

- 11.5 Trademarks
("Trademarks" means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables to designate the origin or source of the goods or services of the Client). Upon completion of the Services and expressly conditioned upon full payment of all fees, costs and out-of-pocket expenses due, the Supplier assigns to the Client all ownership rights, including any copyrights, ("Copyrights" means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under UK Copyright Law) in and to any artworks or designs comprising the works created by the Supplier for use by the Client as a Trademark. The Supplier shall cooperate with the Client and shall execute any additional documents reasonably requested by the Client to evidence such assignment. The Client shall have sole responsibility for ensuring that any proposed trademarks or Final Deliverables intended to be a Trademark are available for use in commerce and do not otherwise infringe the rights of any third party. The Client hereby indemnifies, saves and holds harmless the Supplier from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by any third party alleging any infringement arising out of the Client's use and/or failure to obtain rights to use or use of the Trademark.

12. Rights to Final Artwork

- 12.1 Final Artwork ownership: Upon completion of the Services, and expressly subject to full payment of all fees, costs and out-of-pocket expenses due, the Supplier hereby assigns to the Client all right and title in and to the Final Artwork. The Supplier agrees to reasonably cooperate with the Client and shall execute any additional documents reasonably required to evidence such assignment. Such time to prepare said documents is chargeable by the Supplier at £70 per hour.

13. Print Specific Terms and Conditions

- 13.1 Samples
The Client shall provide the Supplier with four (4) samples of the Final Deliverables, for use in the Supplier's portfolio and other self-promotional uses. Such samples shall be representative of the highest quality of the work produced.

14. General

- 14.1 Modification / Waiver
This Agreement may be modified by the parties. Any modification of this Agreement must be in writing. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.
- 14.2 Notices
All notices to be given hereunder shall be transmitted in writing by electronic mail with return confirmation of receipt or by certified or registered mail, return receipt requested, and shall be sent to the to the addresses identified below, unless notification of change of address is given in writing. Notice shall be effective upon receipt or in the case of e-mail, upon confirmation of receipt.
- 14.3 No Assignment
Neither party may assign, whether in writing or orally, or encumber its rights or obligations under this Agreement or permit the same to be transferred, assigned or encumbered by operation of law or otherwise, without the prior written consent of the other party.
- 14.4 Force Majeure
Either party shall not be deemed in breach of this Agreement if they are unable to complete the Services or any portion thereof by reason of fire,

earthquake, labour dispute, act of God or public enemy, death, illness or incapacity or any local, county, national or international law, governmental order or regulation or any other event beyond either parties control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, either party shall give notice to the other party of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.

14.5 Governing Law and Dispute Resolution

The formation, construction, performance and enforcement of this Agreement shall be in accordance with the laws of the UK and without regard to its conflict of law provisions or the conflict of law provisions of any other jurisdiction. In the event of a dispute arising out of this Agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties. If they are unable to resolve the dispute, either party may commence mediation and/or binding arbitration through the appropriate recognised channels, or other forum mutually agreed to by the parties. The prevailing party in any dispute resolved by binding arbitration or litigation shall be entitled to recover its legal fees and costs. In all other circumstances, the parties specifically consent to the local, state and county courts located in the county of Sussex. The parties hereby waive any jurisdictional or venue defenses available to them and further consent to service of process by mail. The Client acknowledges that the Supplier will have no adequate remedy at law in the event the Client uses the deliverables in any way not permitted hereunder, and hereby agrees that the Supplier shall be entitled to equitable relief by way of temporary and permanent injunction, and such other and further relief at law or equity as any arbitrator or court of competent jurisdiction may deem just and proper, in addition to any and all other remedies provided for herein.

14.6 Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision.

14.7 Headings

The numbering and captions of the various sections are solely for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of the provisions of this Agreement nor shall such headings otherwise be given any legal effect.

14.8 Integration

This Agreement and the Confidentiality Agreement (where applicable) comprises the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings and discussions between the parties relating to the subject matter of this Agreement. By their acceptance of the Quotation, the Client and both parties hereto have agreed to all of the terms and conditions of this Agreement effective from the date of acceptance, and as such represents that he/she has the full authority to enter into this Agreement and to bind her/his respective party to all of the terms and conditions herein.