

These terms and conditions shall apply to the Agreement between Zen Web Solutions ("ZWS") and the Client.

1. Definitions and Interpretation

- 1.1 The following definitions and rules of interpretation apply to these terms and conditions (Conditions).
 - 1.1.1 "Client Permission Agreement" means the email marketing permission agreement signed by the Client in respect of the Services;
 - 1.1.2 "Contract" means the Order Form and the agreed Proposal for the Services and the Client's subsequent acceptance of it under clause 2.2;
 - 1.1.3 "Client" means the person, firm or company who purchases Services from ZWS pursuant to these Conditions;
 - 1.1.4 "Deliverables" means all Documents, products and materials developed by ZWS or its agents, subcontractors and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts) and any deliverables specified in the Order Form or agreed between the parties from time to time;
 - 1.1.5 "Document" means includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
 - 1.1.6 "Email Marketing Services" means the e-mail marketing services described in more detail at clause 12;
 - 1.1.7 "In-put Material" means all Documents, information and materials provided by the Client relating to the Services including (without limitation), computer programs, data, reports and specifications and/or the in-put materials specified in the Proposal;
 - 1.1.8 "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
 - 1.1.9 "Order Form" means the order form for the supply of the Services by ZWS to the Client;
 - 1.1.10 "Pre-existing Materials" means all Documents, information and materials provided by ZWS relating to the Services which existed prior to the commencement of the Contract including but not limited to computer programs, data, reports and specifications;
 - 1.1.11 "Project Proposal" means the final project proposal document agreed between the parties and referenced in the Order Form;
 - 1.1.12 "Search Engine Marketing Services" means the search engine marketing services described in more detail at clause 11;
 - 1.1.13 "Services" means the services to be provided by ZWS under the Contract as set out in the Order Form, and ZWS' obligations under the Contract, together with any other services which the Client takes or agrees to take from ZWS;
 - 1.1.14 "VAT" means value added tax chargeable under English law for the time being and any similar additional tax;
 - 1.1.15 "Web Design and Development Services" means the web design and development services described in more detail at clause 10;
 - 1.1.16 "Web Hosting Services" means the web hosting services described in more detail at clause 13;
 - 1.1.17 "ZWS" means Zen Web Solutions, a trading style of Zen Internet Limited (Company number 03101568), whose registered office is at Sandbrook House, Sandbrook Park, Sandbrook Way, Rochdale OL11 1RY.
- 1.2 Headings in these conditions shall not affect their interpretation.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.5 A reference to writing or written includes faxes but not e-mail.
- 1.6 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

2. Application of Conditions

- 2.1 These Conditions shall:
 - 2.1.1 apply to and be incorporated into the Contract; and
 - 2.1.2 prevail over any inconsistent terms or conditions supplied by the Client, including but not limited to any terms contained, or referred to, in any purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Client, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Client's completion of the Order Form constitutes an offer by the Client to purchase the Services on these Conditions. No offer placed by the Client shall be accepted by ZWS other than:
 - 2.2.1 by a written acknowledgement issued by ZWS; or
 - 2.2.2 (if earlier) by ZWS starting to provide the Services,when a contract for the supply and purchase of the Services on these Conditions will be established. The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.
- 2.3 Quotations are given by ZWS on the basis that no Contract shall come into existence except in accordance with condition 2.2. Unless otherwise agreed by ZWS, any quotation is valid for a period of 60 days from its date, provided that ZWS has not previously withdrawn it.
- 2.4 In the event of any inconsistency or conflict between the provisions of these Conditions , the Proposal and the Order Form, the following order of precedence shall apply:
 - 2.4.1 the Order Form;
 - 2.4.2 the Proposal; and
 - 2.4.3 these Conditions.

3. Changes

- 3.1 We may have to suspend your access to the Services if we have to deal with technical problems, or to make improvements to the Service. We will let you know in advance where this occurs, unless the problem is urgent or an emergency.
- 4. We may also have to change these terms and conditions. Where this is necessary we will publish details of all changes on our web site at least 30 days before they take effect. However, if we need to make changes earlier for security, regulatory or legal reasons, we may be unable to give you 30 days notice. In those circumstances, we will let you know about any changes as soon as we can. If we have made a change to your significant disadvantage you may terminate this Agreement early.

5. Commencement and duration

- 5.1 The Services supplied under the Contract shall be provided by ZWS to the Client from the date and for the duration specified in the Order Form or as otherwise agreed between the parties in writing from time to time.

6. Client Obligations

- 6.1 The Client shall:
 - 6.1.1 co-operate with ZWS in all matters relating to the Services;
 - 6.1.2 provide to ZWS, in a timely manner, such In-put Material and other information as ZWS may reasonably require in connection with the provision of the Services and ensure that it is accurate in all material respects and the Client acknowledges that failure to provide such information and materials may have an adverse effect on the timings of the project;
 - 6.1.3 maintain a retrievable record of all In-put Material and any other information provided to ZWS in connection with the Services and the Client acknowledges that ZWS shall not be responsible for keeping such records on its behalf;
 - 6.1.4 provide the In-put Material and any other information in electronic format suitable for processing by ZWS. A list of supported formats will be provided to the Client on request.
 - 6.1.5 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of In-put Material insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment, in all cases before the date on which the Services are to start;

7. ZWS' Obligations

- 7.1 ZWS shall:
 - 7.1.1 provide the Services with all reasonable skill and care;

- 7.1.2 use its reasonable endeavours to ensure that the Services will be performed in full compliance with all relevant legal requirements, regulatory requirements and guidance and best industry practice.
- 7.1.3 subject to the Client providing any information in accordance with clause 6.1.2, use its reasonable endeavours to provide the Services, and to deliver the Deliverables to the Client, in accordance in all material respects with the Project Proposal;
- 7.1.4 use its reasonable endeavours to meet any performance dates specified but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

8. Charges and Payment

- 8.1 In consideration of the provision of the Services by ZWS, the Client shall pay the charges as set out in the payment schedule contained in the Order Form.
- 8.2 All fees payable by, and quoted to, the Client shall be exclusive of VAT or any other applicable tax or duty, which ZWS shall add to its invoices at the appropriate rate;
- 8.3 All fees quoted are in British pounds sterling and must be paid in this currency unless otherwise agreed in writing by ZWS.
- 8.4 Where credit status is granted to the Client, the Client shall pay each invoice submitted to it by ZWS, in full and in cleared funds, within 30 days of the date of such invoice to a bank account nominated in writing by ZWS. Where credit status is not granted, the Client shall pay each invoice submitted to it immediately upon receipt.
- 8.5 Without prejudice to any other right or remedy that it may have, if the Client fails to pay ZWS on the due date, ZWS may suspend all Services until payment has been made in full.
- 8.6 Time for payment shall be of the essence of the Contract.
- 8.7 Subject to clause 16.2, all sums payable to ZWS under the Contract shall become due immediately on its termination, despite any other provision. This condition 8.7 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 8.8 ZWS may, without prejudice to any other rights it may have, set off any liability of the Client to ZWS against any liability of ZWS to the Client.
- 8.9 Changes to any design or layout following the design phase sign off by the Client for any project may be subject to additional charges at ZWS's then current standard daily rates, at the discretion of ZWS.

9. Intellectual Property Rights

- 9.1 The Client agrees to defend, indemnify and hold harmless ZWS against liabilities arising out of any material supplied by the Client (including but not limited to the Input Material) infringing or allegedly infringing on the proprietary rights of a third party.
- 9.2 As between the Client and ZWS, all Intellectual Property Rights and all other rights in the Pre-existing Materials shall be owned by ZWS. Subject to condition 9.3, ZWS licenses all such rights to the Client free of any additional charges and on a perpetual, non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services. .
- 9.3 The Client acknowledges that, where ZWS does not own any Pre-existing Materials, the Client's use of rights in Pre-existing Materials is conditional on ZWS obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle ZWS to license such rights to the Client. ZWS accepts no liability for any loss, damage, costs or liability suffered by the Client in the event that the Client uses the Pre-existing Materials without such a licence.
- 9.4 Rights to all source code, creative source, database designs and code, work-up files, third-party components and computer programs are specifically not transferred to the Client, and shall remain the property of their respective owners.
- 9.5 Subject always to the remainder of this condition, upon receipt of any and all final fees due as detailed in the Project Proposal, copyright to the creative design and to the finished assembled work in the Deliverables produced by ZWS is transferred to the Client.
- 9.6 ZWS retains the right to display graphics and other design elements of the Deliverables as examples of their work in its portfolio (including but not limited to displaying such graphics and design elements on its website).
- 9.7 ZWS will indemnify the Client against any and all actions or claims incurred by the Client arising out of any actual or alleged infringement of any patent, copyright or trade secret in respect of material supplied by ZWS in relation to the Services provided that:
 - 9.7.1 the action and/or claim does not arise as a result of the unauthorized modification or alteration or adaptation of the Deliverables, including but not limited to website content, by the Client; and/or

- 9.7.2 the action and/or claim does not arise as a result of the use of software or equipment not supplied or approved by ZWS; and
- 9.7.3 the Client notifies ZWS immediately of any claim or demand made or action brought against it and has not made any comment or admission to any third party in respect thereof; and
- 9.7.4 ZWS shall have conduct of all proceedings or negotiations relating to such allegations or claims and shall deal with the same as it sees fit in its absolute discretion; and
- 9.7.5 the Client shall provide all reasonable assistance to ZWS in relation to the conduct of such litigation and/or negotiations.

10. Web Design and Development Services

- 10.1 Where the Client purchases Web Design and/or Web Development Services, the remainder of this clause shall apply.
- 10.2 ZWS and the Client shall agree a set of project milestones and deliverables at the project outset.
- 10.3 It is the responsibility of the Client to ensure that any and all In-put Materials (including but not limited to website content) is completed and provided to ZWS during the Website Build Phase. Thereafter ZWS agrees to enter any and all remaining website content (subject to the limits contained in the Project Proposal) as provided by the Client, provided that such content is supplied to ZWS in a single batch and in a complete and final state. The Client agrees to provide timely review and acceptance of the Deliverables once they have been passed over to the Client for acceptance testing. A reasonable period of time (not to exceed 4 weeks) will be provided for such acceptance testing. Where the Client fails to complete acceptance testing within this period, at the discretion of ZWS, any outstanding final charges as detailed in the Project Proposal will become due for payment (subject to the agreed payment terms as detailed in the Project Proposal).
- 10.4 The Client agrees to credit ZWS in the footer section of their website by displaying a subtle hyperlink back to the ZWS website, unless explicitly agreed otherwise in writing.
- 10.5 Following completion of the site ZWS will provide to the Client, free of charge, and for a period of 3 months, a website support service, as defined in the Project Proposal document. Any software “bugs” or functionality failures will be rectified free of charge during this period. This service does not include any design modifications, functionality changes or site enhancements. Such items are subject to additional charges on a bespoke basis.
- 10.6 For static websites only, once the website design has been accepted and signed off by the Client, the remainder of the project (the ‘Website Build’ phase) will run for a period of 12 weeks (unless agreed otherwise between the parties) at which point the project will be deemed to be complete and any outstanding fees will become payable by the Client.

11. Search Engine Marketing Services

- 11.1 Where the Client purchases Search Engine Marketing Services, the remainder of this clause shall apply.
- 11.2 ZWS does not represent or warrant that a Client’s website will achieve a favourable position, or any particular position, within search engine rankings as a result of any search engine optimisation or promotion services. Whilst rankings cannot be guaranteed, ZWS will use its reasonable endeavours to achieve optimal results for the Client within the scope of the Services provided.
- 11.3 As part of the Search Engine Marketing Services, ZWS will provide to the Client a series of reports at intervals as agreed in the Project Proposal. These reports provide details of the performance of the Client’s website analysing traffic trends and identifying key search phrases. The Client accepts that these reports are based upon a snapshot in time. ZWS does not represent or warrant that the ranking positions illustrated in these reports will remain for any given period of time.
- 11.4 ZWS cannot be held responsible for a drop in or unsatisfactory search engine ranking results in the event of any of the following scenarios:
 - 11.4.1 recommendations made to the Client by ZWS for changes to any of website copy, navigation or layout have not been undertaken;
 - 11.4.2 website copy, navigation and/or layout changes to the Clients website without the knowledge and approval of ZWS within the defined service period;
 - 11.4.3 other online marketing activities undertaken by the Client or a nominated third party without the knowledge and approval of ZWS within the defined service period;
 - 11.4.4 loss of availability of the Clients website due to a failure in or lack of reliability of any third-party hosting services; and/or
 - 11.4.5 a change in the indexing algorithms by any of the major search engines, which may result in a wholesale re-indexing of search engine ranking listings. In the event that this occurs, ZWS

shall use its reasonable endeavours to rectify this issue for the remainder of the contract term.

12. Email Marketing Services

- 12.1 Where the Client purchases Email Marketing Services, the remainder of this clause shall apply.
- 12.2 The Email Marketing Services may only be used in compliance with the Data Protection Act 1998 and all other applicable laws.
- 12.3 The Client may only distribute emails in accordance with the Client Permission Agreement. The Client agrees to indemnify and hold harmless ZWS against any damages, losses, liabilities, settlements, and expenses in connection with any claim or action that arises from an alleged violation of any national or international laws resulting from the Client's illegal use of the Email Marketing Services or use of the Email Marketing Services in breach of the terms of the Contract, including but not limited to the Client Permission Agreement.
- 12.4 For the purposes of reporting and legal compliance, ZWS reserves the right to monitor the email campaigns created by the Client and the Client's use of the Services. ZWS also reserves the right to remove any content or immediately suspend use of the Services, if it reasonably believes that the use is: 1) in violation of any national or international laws; 2) constitutes pornography; or 3) is excessively violent or contains harassing content or hate speech; 4) improperly exposes trade secrets or other confidential information of another person; or 5) is otherwise malicious, fraudulent, or may result in retaliation against ZWS by offended recipients.
- 12.5 The software used for the Services will automatically append an "unsubscribe" link to all outgoing email which will allow visitors to remove themselves from the Clients mailing list. ZWS may immediately suspend the Clients use of the Services if any attempt should be made to remove or disable this link.
- 12.6 ZWS will only use Client data in connection with the provision of the Service and ZWS will not share information uploaded by the Client (such as email addresses, name, contact information, or images) to any other parties except for those involved in the provision of the Services and only to the extent necessary for the provision of the Services. ZWS will not use Client information for the purpose of sending unsolicited commercial e-mail. ZWS may use this information and any technical information about your use of the Services to facilitate your use of the Services or in communications with the Client.
- 12.7 The Client agrees to credit ZWS in the footer section of their email design template by displaying a subtle hyperlink back to the ZWS website, unless explicitly agreed otherwise in writing.

13. Web Hosting Services

- 14. Where the Client purchases Web Hosting Services, the remainder of this clause shall apply.
- 14.1 Any Web hosting services as detailed in the Project Proposal are subject to Zen Internet's General Terms and Conditions of Supply (a copy of which will be provided upon request).
- 14.2 The Client understands and agrees that any Web Hosting Services as detailed in the Project Proposal shall be provided for a minimum service period of 12 months from the date of provision, unless otherwise agreed in writing.

15. Limitation of Liability

- 15.1 This condition 15.1 sets out the entire financial liability of ZWS (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Client in respect of:
 - 15.1.1 any breach of the Contract;
 - 15.1.2 any use made by the Client of the Services, the Deliverables or any part of them; and
 - 15.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 15.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 15.3 For the avoidance of doubt:
 - 15.3.1 ZWS shall not be responsible for the performance of third party services that are introduced to the Client in connection with the provision of the Services; and
 - 15.3.2 if ZWS's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, ZWS shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 15.4 Nothing in these Conditions limits or excludes the liability of ZWS:
 - 15.4.1 for death or personal injury resulting from negligence; or

- 15.4.2 for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by ZWS.
- 15.5 Subject to condition 15.2 and condition 15.4, ZWS shall not be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 15.6 ZWS's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services.
- 15.7 The Client shall be liable to pay to ZWS, on demand, all reasonable costs, charges or losses sustained or incurred by ZWS (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to ZWS confirming such costs, charges and losses to the Client in writing.

16. Termination and Suspension

- 16.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:
- 16.1.1 the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- 16.1.2 the other party becomes insolvent or has a Receiver or Administrative Receiver appointed or passes a resolution for winding-up or a Court of competent jurisdiction makes an order to that effect or if the other party becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threaten to cease to carry on business; or
- 16.1.3 there is a change of control of the other party; or
- 16.1.4 (in the case of ZWS), the Client fails to pay any sum due under the terms of the Contract and such sum remains unpaid for 30 days after written notice from ZWS that such sum has not been paid.
- 16.2 On termination of the Contract for any reason:
- 16.2.1 the Client shall immediately pay to ZWS all of ZWS's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, ZWS may submit an invoice, which shall be payable immediately on receipt; and
- 16.2.2 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 16.3 In the event that the Contract terminates due to ZWS' insolvency as per clause 16.2.1, and subject to the Client having paid any and all Charges due, then ZWS shall (insofar as it is able to do so) return all Input Materials and shall transfer to the Client the Deliverables (or part thereof) including, but not limited to, any source code.
- 16.4 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect: conditions 9, 15, 16, 20 and 31.
- 16.5 ZWS reserves the right to suspend the Services and/or remove the Deliverables from public view on the Internet:
- 16.5.1 until the receipt of all fees due as detailed in the Project Proposal; and/or
- 16.5.2 if required to do so by a competent court or regulatory authority.

17. Data Protection

- 17.1 Terms which are defined in Data Protection Legislation and used in this clause shall have the same meanings as in Data Protection Legislation.
- 17.2 Each party shall, at all times during the Term, comply with all the provisions and obligations imposed upon it by Data Protection Legislation when performing its obligations or exercising its rights under the Contract.
- 17.3 The Client acknowledges that:
- 17.3.1 ZWS may hold names and other information contained in the Order Form and the Input Materials in a computerised database. The Client agrees that such data may be processed and may, in certain circumstances, be supplied to and processed by ZWS' suppliers to enable the provision and maintenance of the Services. For the avoidance of doubt, ZWS shall not utilise

the data for marketing purposes and/or sell or transfer the data without the Client's prior consent;

17.3.2 ZWS may, from time to time, be required under regulations and/or legislation to co-operate with and/or disclose data to, government or other bodies and/or authorities.

18. Non Solicitation of Staff

18.1 For the duration of this Agreement and for 12 months thereafter, neither party will directly solicit for employment any personnel of the other. For the avoidance of doubt, nothing in this clause shall prohibit either party from giving consideration to any application for employment submitted on an unsolicited basis or in response to a general advertisement of employment opportunities.

19. Publicity

19.1 The Client agrees that ZWS can use the Client's company name and/or logo(s) in its own Client list and any promotional material. If the Client does not wish to appear on the ZWS Client list or on any promotional material, ZWS will remove them at the Client's request.

19.2 Subject to clause 19.1, neither party may use in any advertising, publicity, promotional marketing or other activities any name, trademark, trade name or other designation of the other party without the other party's prior written consent.

20. Confidentiality

20.1 Each party shall:

20.1.1 keep the other party's Confidential Information confidential and no less secure than it keeps its own Confidential Information;

20.1.2 use Confidential Information only for the purposes of the Contract; and

20.1.3 use all reasonable endeavours neither to disclose any Confidential Information to any unauthorised person nor to permit any unauthorised use or possession of such Confidential Information. For the avoidance of doubt, a party may disclose Confidential Information to its professional advisers, subject to appropriate confidentiality measures being in place with those advisers.

20.2 Each party shall ensure that its employees, agents and subcontractors are aware of, and comply with, the provisions of this clause.

20.3 The obligations in clauses 20.1.1 and 20.1.3 do not apply to Confidential Information which:

20.3.1 is in the public domain at the date of this Agreement or subsequently comes into the public domain otherwise than as a result of a breach of clauses 20.1.1 and 20.1.3;

20.3.2 was rightfully in possession of a party prior to the commencement of negotiations leading to this Agreement; or

20.3.3 a party is required to disclose by a competent court or regulatory authority.

20.4 The obligations of confidentiality in this clause shall survive the termination of this Agreement.

20.5 Subject to clause 19, neither party shall disclose the existence of or the subject matter of this Agreement nor make any other kind of public statement relating to the existence, subject matter or performance of this Agreement without obtaining the other party's prior written consent, such consent not to be unreasonably withheld or delayed.

21. Force Majeure

21.1 ZWS shall have no liability to the Client under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

21.2 If ZWS is unable to perform its obligations pursuant to clause 21.1, it may terminate the Contract by giving to the Client 10 days notice in writing. In such circumstances, ZWS shall render an invoice for such part of the Services that have been delivered or completed, but not previously billed.

22. Variations

22.1 The Client may at any time request variations to the Project Proposal by written notice to ZWS.

22.2 On receipt of a request for variation or such other period as may be agreed ZWS shall indicate by notice in writing to the Client the terms upon which ZWS will perform the requested variation, including the effect of the variation on the price payable by the Client and the effect on the length and timings of the project as a result.

- 22.3 If ZWS serves a notice pursuant to 22.2 above the Client shall within 5 working days of the date of ZWS written notice elect by written notice to ZWS whether or not it wishes the variation to proceed. In the absence of a Client's notice ZWS shall assume the variation is not to proceed.
- 22.4 ZWS may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. ZWS may, from time to time change the Services, provided that such changes do not materially affect the nature or quality of the Services.
- 22.5 Subject to condition 22.4 no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

23. No Waiver

- 23.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 23.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

24. Severance

- 24.1 If any provision of the Contract (or part of any provision) is held by any court or other competent authority to be void, voidable, illegal, invalid or otherwise unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 24.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

25. Assignment

- 25.1 The Client shall not, without the prior written consent of ZWS, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of ZWS.
- 25.2 ZWS may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 25.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

26. No Partnership or Agency

- 26.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

27. Notices

- 27.1 Any notices to be given under this Agreement shall be written in the English language and delivered personally or sent by recorded post to the addresses set out at the beginning of this Agreement, or as otherwise specified by the relevant party by notice in writing to the other party. Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, and if sent by post, 48 hours after posting.

28. Third Party Rights

- 28.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of any third party which exists or is available apart from that Act.

29. Entire Agreement

- 29.1 The Contract, together with these Conditions, the Project Proposal and Order Form, form the entire understanding between ZWS and the Client, for the supply of the Services and supersede all previous agreements between the parties relating to its subject matter, including but not limited to, any prior verbal agreement.
- 29.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as expressly provided in the Contract.
- 29.3 Nothing in this condition shall limit or exclude any liability for fraud.

30. Dispute Resolution

30.1 Any disputes or differences under or arising out of the Contract may be referred to a single arbitrator to be agreed upon by the parties or in default of agreement by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996.

31. Governing Law

31.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

31.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).