

1. Definitions

- 1.1 'Brief': brief from you for Services stating the intended use and pre-set timings for supply of Services agreed by PC;
- 1.3 'Contract': this form and concluded by you requesting PC and PC providing Services;
- 1.3 'On-line Project': web site, web services, website hosting and support, other On-line Project, design or development (including associated or related products such as Pay Per Click, Search Engine Optimisation, Google Analytical or other services), email marketing, telecommunication, electronic communication or promotion or other internet or messaging services,
- 1.3.1. 'Non-On-line Project Services': Graphic Design, Copy Writing, Social Media Planning, Filming and Production for use offline (not on the internet) and or online (on the internet).
- 1.4 'Expenses': All expenses related to production or Services, including but not limited to couriers, dubs, stock, printouts, scans and overtime or use of or purchase of advertising space as part of the Brief; 'Goods': any goods, chattels or physical items comprised in the Services;
- 1.5 'Job Cost': the fee to be charged by PC for the Services and Project specified on the front of this form;
- 1.6 'Links': any hypertext or other links provided as part of our Services;
- 1.7 'Marks': any trademarks, trading styles or trade names, icons, logos or other similar items of you or any third party used in the Services;
- 1.8 'PC': **Perfect Circle Consultancy Limited** registered office 103 High Street, Lees, Oldham, OL14 4LY, and trading address Drydock Mill New Road Littleborough Lancashire OL15 8LX company number 9887468 **trading as Perfect Circle** acting in this Contract as a principal and not as agent for you and which will enter into all related contracts as principal; 1.9 'Project': the project or job leading to the supply of the Services;
- 1.10 'Services': all advice, consultancy, on-line project, web project or service, website hosting and support, electronic communication, goods, graphic design, know-how, marketing, materials, media, print, promotional or other products to be supplied by PC in relation to the Brief for the Project;
- 1.11 'Subscription': any recurring or other fee for Non-On-line and or On-line Project items;
- 1.12 'Rights': registered or unregistered copyrights, patents and design, trademark, database or other intellectual property rights (or similar or equivalent rights or protection in any part of the world) in or relating to the Services.
- 1.13 'Terms': these terms and conditions.
- 1.14 'You': the person, firm, company or other organization requiring Services.
- 1.15 'DPA' means Data Protection Act 1998 and any subordinate legislation enacted to the Data Protection Act 1998, as amended from time to time, or any statute enacted in the United Kingdom which replaces, supersedes or extends the Data Protection Act 1998. At such time as the regulation (commonly referred to as the General Data Protection Regulation) anticipated to replace the Data Protection regime comes into force in the United Kingdom, reference in this agreement to the DPA will be deemed to include such regulations as enacted and as amended from time to time after it is enacted.
- 1.16 'Personal Data' - means any information relating to an individual or identifiable natural person "data subject"; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social identity of that natural person.
- 1.17 'Controller' - means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by union or member state law, the controller or the specific criteria for its nomination may be provided for by union or member state law.
- 1.18 'Processor' - means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- 1.19 'Processing': in relation to information or data means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
1. a) organisation, adaptation or alteration of the information or data,
 2. b) retrieval, consultation or use of the information or data,
 3. c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
- d) alignment, combination, blocking, erasure or destruction of the information or data

2. PC's Terms & Obligations

2.1 PC's Services are directed exclusively at commercial enterprises, schools and organisations in the United Kingdom. Terms apply to the Contract and Services provided by PC from time to time unless otherwise agreed in writing.

2.2 PC will:

- 2.2.1 use reasonable care and skill in the supply to you of Services; and/or
- 2.2.2 use reasonable efforts to make our Service available to you at all times; and
- 2.2.3 take the steps secure personal data in accordance with PC's privacy policy (available on written request).

2.3 These Terms apply to the Contract and all future commissions or requests for Services received by PC from the Client from time to time unless otherwise agreed in writing. The communication of a request by the Client to PC for the supply of Services shall be the Client's acceptance of these Terms that shall take precedence over any terms and conditions of the Client, whatsoever. They may not be varied except by written agreement between PC and the Client.

3. Your obligations & Promises

3.1 For On-line Project you represent to PC and suppliers or buyers of goods and services marketed through PC that:

3.1.1 all purchases made through PC Services will be for purposes integral to your business, school or organisation and within the scope of your authority to conclude contracts on behalf of your business;

3.1.2 all emails sent from your account or through PC's email services are sent on the basis that the recipient has opted in to receive such emails.

3.1.3 you will ensure at all times that reasonably adequate data back up is in place and operational and you hereby authorise PC to back up such data as PC shall in PC's absolute discretion think fit but PC shall not at any time be required to do so or liable for the loss of data.

3.2 You warrant that the Brief and all other information supplied to PC is accurate in all respects.

3.3 You agree that you will not exploit our Services or any of PC's know-how for any purpose conflicting or in direct competition with PC.

4. Payment

4.1 In return for PC's Non-On-line Project Services you agree to pay the Job Cost in accordance with the payment schedule notified to you by us.

4.1.1 When Non-On-line Project Services and or On-Line Project Services (excluding website hosting and support and rental of the Sharpspring platform) have been provided and billed, monthly and at the same price for more than twelve consecutive months, PC will without reference to you consider these On-line and Non-On-line Project Services to be a Subscription with the termination rights covered in section 14.4

4.2 In return for PC's On-line Project Services, you agree unless otherwise agreed in writing to pay Subscriptions at the rate applicable from time to time including:

4.2.1 An initial setup fee for your account of one third of the Project and Service cost on PC accepting your brief;

4.2.2 A further fee third of the Project and Service cost on PC providing to you any creative design; and

4.2.3 A final fee of third of the Project and Service cost on you signing off Services; and

4.2.4 Where notified in advance by PC a fee charged per email sent or at the charge notified to you in writing;

4.2.5 A monthly fee for each month or part month for which On-line Project Services are provided payable by standing order commencing 15 days in advance of the start of PC providing Services.

4.2.6 An annual hosting fee to cover the hosting and support of a website.

4.3 If you fail to pay any sum due under the Terms PC may, without prejudice to any other rights, deny you access to Services or suspend its obligations until payment has been made in full without prior notice.

4.4 Without prejudice to any other right or remedy, if you fail to pay PC on the due date, PC may charge you interest at 4% per year above the base rate of the Bank of England from time to time accruing daily and compounded annually on every sum overdue for payment calculated from the date due until payment whether before or after judgment.

4.5 PC further reserves the right to claim and you agree to pay interest under the Late Payment of Commercial Debts (Interest) Act 1998.

4.6 PC reserves the right to require you to pay in advance all or any part of the total Job Cost or other sum on account before PC provides and Services to cover PC's time attending meetings and/or producing Services and notwithstanding that a final Job Cost Subscription or other sum or budget has not been agreed and in advance of a final sign-off by you of any cost or budget.

5. Brief, Services and changes

5.1 The Job Cost and/or Subscription and any manner of or pre-set dates for supply of the Services will be agreed on the basis of the Brief. Any changes, whether resulting from alterations by you, delay in providing PC with materials, information, instructions or authorisations, supply of faulty information or materials to PC by you, or any other circumstances beyond PC's control, will result in extra charges for PC's time and work and may involve delays in supply of Services.

5.2 You will pay all extra charges and reimburse PC for any third party charges or expenses incurred by PC.

5.3 You agree to make payment in advance of such amount on account of cost of Services as PC shall reasonably request.

5.4 PC reserve the right to request advance payment in respect of Services involving email campaigns, adwords, website hosting and support, outdoor, radio train, bus cinema or other similar advertising media.

5.5 You agree that you will be deemed to have signed off and accepted any Services provided 7 days after PC request your confirmation of acceptance and payment for such Services will then become immediately due and payable unless otherwise agreed with PC in writing.

5.6 You agree that website hosting and support will be invoiced annually, 15 days prior to the renewal date and that by accepting website hosting and support services from PC, you agree that it is an annual contract that automatically renews until cancelled in writing in accordance with clause 14.5 in these terms and conditions.

5.7 You agree that you will be deemed pay for any Services involving creative designs produced by PC on presentation of the same to you unless otherwise agreed with PC in writing.

6. Production and Third Parties

Unless agreed in writing PC will arrange and oversee all production and post-production related to the Project. Should it be agreed that you arrange or PC introduces you to a third party for any production or other work whatsoever, then PC shall not be responsible for the booking, supervision, quality control or otherwise of any relevant services or facilities, nor will it be responsible for payment of any related charges.

7. Approvals

7.1 Written or verbal approval by you of final copy, layouts, scripts, storyboards, designs and like material will be PC's authority to proceed with production or publication as appropriate.

7.2 Where artwork or other material is sent to you for final approval, you must check it carefully and notify PC by email, fax or post of any errors or alterations. PC will use reasonable endeavours to effect changes so notified but PC reserves the right to charge extra if any of these alterations go beyond the original Brief or are notified to PC more than 3 working days after their supply to you.

7.3 Where notification of errors is either delayed or does not occur at all before publication, PC will not be liable for such errors nor errors occurring where you either do not pay for proofs or mock-ups or oversee the print and production process

or do not allow time in the production schedule to check layouts, design, copy, pagination or other content aspects. PC cannot guarantee that any or all colours will be exactly replicated in the final version as published.

7.4 You the customer authorise PC to sign and accept on your behalf any contract and or agreement with Sharpspring that is required to ensure the continued provision of the Sharpspring Software and or PC's Professional Services.

7.5 All agreements between PC and you for the provision of the Sharpspring Software Platform and or Professional Services are in addition to any agreement signed by you with Sharpspring directly and or signed and accepted on behalf of you by PC with Sharpspring.

8. Rights

You will have a royalty free licence, coming into effect on payment of PC's fees, to use the Services for purposes in the territories defined agreed between us in writing and/or the Brief. Such licence shall be automatically terminated if you:

8.1 do not pay the Job Cost or Subscription in full by the relevant due date; or

8.2 (being a company) pass a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or

8.3 (being a partnership or other unincorporated association) dissolve that organisation or (being a natural person) dies; or

8.4 become or is declared insolvent or convene a meeting of or make or propose to make any arrangement or composition with creditors; or

8.5 have a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any assets; or

8.6 cease, or threaten to cease, to carry on its business.

8.7 To use Services in ways going beyond the parameters of the Brief and/or Project, you must approach PC for prior written consent which shall not be unreasonably withheld or delayed.

8.8 Where use of the Services involves third party material, PC will subject to you indemnifying PC against third party charges secure such licence as is necessary to allow the required use of the same.

8.9 Subject to the above and to the rights of any third party, ownership of the Rights shall remain vested in PC unless and until any assignment or other disposition of the Rights is agreed between the parties in writing.

8.10 Where PC makes any presentation to you going beyond the Brief, you shall have no right to make use of any material contained in such presentation unless and until a separate contract is concluded between the parties.

8.11 Where use or production of the Services may involve you in continuing liability to third parties (such as royalties, licence fees and performance fees) PC will notify you of these as soon as practicable.

8.12 If, during or after the period of use of the Services envisaged, you wish to use or authorise another to use any design, figure, distinctive device or other part of the Services in ways outside those contemplated in this Contract, PC will not unreasonably withhold its consent for such use but may make such consent conditional on prior agreement between the parties as to reasonable fees and/or royalties.

8.13 Links incorporated in our Service does not imply endorsement or approval by us of the linked service, its operator or its content. PC will not be held responsible for the content of any matter or service outside PC's Service.

9. Compliance

9.1 It will be your sole responsibility to ensure that the Services:

9.1.1 comply with all local laws (whether consumer, public or civil), regulations and codes in all countries in which use is intended as stated in the Contract;

9.1.2 carry all disclaimers, warnings and public information that any competent lawyer in any relevant jurisdictions would advise.

9.3 You agree to indemnify and hold harmless PC and PC's agents and employees from any liability, cost, loss, damages award, sum payable by way of settlement or other expense of any kind (including reasonable legal fees) arising from any claim, demand or action alleging that the Services or use of them are contrary to any law, code or regulation in any country

9.4 You agree that for the purposes of this agreement you are Data Controllers under the DPA and that PC is a Data Processor and each party shall comply with its respective obligations set out in the DPA. PC as the data processor will act only on instructions from the customer in respect of the personal data processed by PC and in compliance with its obligations under the DPA. You as Data Controller will only provide data to PC that has been collected in accordance with the DPA and shall provide instructions to process only in accordance with the requirements of the DPA.

10. Publicity and examples

10.1 Notwithstanding the licence under clause 8 or any other disposition of the Rights agreed between the parties, PC shall have a continuing right to use the Services for the purposes of advertising or otherwise promoting PC's work.

10.2 You shall unless otherwise agreed mark all design work comprised in the Services with the phrase '*Design by Perfect Circle. www.perfect-circle.com*' (or appropriate variants as agreed) but PC reserves the right to request the non-appearance or removal of such credit. You shall comply with any such request within 30 days, but shall not be obliged to change material already produced or published.

10.3 You shall, within 28 days after production or publication commences (as appropriate), provide PC with 10 finished printed copies of any production run or other published material derived from the Services.

11. Expenses

11.1 PC will, where practicable, estimate studio costs and extra charges for external services to be used in relation to the Services, but this will not always be possible. All Expenses will be subject to any applicable third party's trading terms and invoiced by PC at cost and you agree to pay all such invoices within 14 days of the date of the invoice.

11.2 PC reserves the right to require you to pay the full amount of the Expenses in advance.

11.3 PC will charge Expenses and you will pay the relevant invoices within 14 days of the date of invoice.

12. Delivery

12.1 Delivery of Goods will be deemed to occur either after two business days have elapsed following the day you are informed that Goods are awaiting collection or, where the Services include delivery of Goods to you, on the day of delivery. 12.2 If you do not collect Goods when requested, PC will be entitled to arrange storage, insurance and/or transportation for Goods on your behalf and at your expense and you agree to pay all charges forthwith on request.

12.3 You must inspect and check Goods immediately on delivery and give PC notice and details of any alleged defect in writing by fax or post within 3 working days after delivery and permit PC to inspect any such Goods. Failing such notice, Goods shall be deemed to be in accordance with the Terms and you shall be deemed to have accepted Goods and to be liable to pay for Goods.

12.4 The risk in Services and Good will pass to you upon the supply or transportation to you or, where you will not accept supply or delivery on the date PC arrange storage.

12.5 Where delivery difficulties or other circumstances necessitate PC electronically storing any part of the Services for your future use, PC reserves the right to levy storage charges and charges for retrieval from storage, which you agree to pay within 14 days invoice.

12.6 Where Services are supplied to you as online services or on computer disks or other electronic storage method, then PC remains the owner of all storage media and reserves the right to require immediate return of them. Should artwork be supplied to you in digital form, you may not amend it or otherwise use it for purposes outside those contemplated by the Contract without PC's express prior written permission.

13. Trade marks and domain names

If any Services use Marks owned by or under your control, PC shall have the right and be authorised by you to use or allow use of such Marks to fulfill PC's obligations under the Contract. PC will not gain any rights over such Marks but be entitled to use the Marks during and after the production and supply of the Services to promote and advertise its own work. You will ensure that all domain names, email addresses or Marks as are supplied by PC as part of the Brief for the Services are properly registered, do not infringe any third party rights and not so used as to undermine rights in the Marks or infringe any third party rights.

14. Rejection, cancellation & termination

14.1 Unless a rejection fee has been agreed in writing in advance, you have no right to cancel or terminate or allege breach of the Contract or seek reduction or repayment of Job Cost or Subscription on the basis of style or composition or content.

14.2 Following conclusion of the Contract on these Terms, any subsequent cancellation by you will result in you being liable for the full Job Cost and all outstanding Subscriptions, Expenses or other sums due to PC as if the cancellation had not taken place, excluding such committed third party expenses as PC is able to avoid liability for within its existing contractual arrangements with suppliers.

14.3 PC may suspend or terminate your Subscription to On-line Project Services immediately if you are in material breach of any of these Terms.

14.4 You may terminate your Subscription to On-line Project Services (excluding website hosting and support and rental of the Sharpspring platform) upon giving 6 months notice in writing but only after an initial contract period of 3 months from commencement of the Service. Invoices are raised on the 10th of each calendar month for the following month. Notice of cancellation of services given to PC by customers during any calendar month, will trigger the agreed notice period once the period covered by the current monthly invoice has elapsed.

14.4.1 You may terminate your Subscription to Non-On-line Project Services as explained in section 4.1.1 upon giving 6 months notice in writing.

14.4.2 The Sharpspring platform is provided for an initial period of one year and renews for a further year automatically on each anniversary of the agreement start date. You can cancel this agreement only by giving us three months written notice prior to the annual renewal date.

14.5 Website hosting and support is invoiced annually and renews automatically after twelve months have elapsed. You may terminate your website hosting and support service by giving 3 months written notice prior to its annual renewal date.

14.6 PC reserves the right to withdraw its services at any time without prior notification.

14.7 Such termination shall be without prejudice to the parties' accrued rights and liabilities including PC's entitlement to payment for work done or already ordered at termination.

15. Liability

15.1 Nothing in these Terms shall exclude or restrict PC's liability for death or personal injury resulting from its negligence, liability for fraudulent misrepresentation or any other liability which cannot be excluded or limited under applicable law.

15.2 Subject to clause 15.1 PC's total liability to you in contract law or in tort or otherwise howsoever arising in relation to this Contract is limited to PC's charges for the Services;

15.3 PC shall not be liable in any way in respect of:

15.3.1 any failure, delay or defect in supply or use of the Services caused by the supply or specification by you of unsuitable material or content or by the reproduction by a third party; and

15.3.2 economic loss including loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of any description howsoever caused and even if foreseeable by PC.

15.2.3 any breach of this Contract caused by matters beyond its reasonable control including acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving PC's employees), pandemic, weather of exceptional severity, unavoidable hardware or software failures, or acts of local or central government or other authorities. 15.4 All warranties, conditions and other terms implied by statute, common law or otherwise are hereby excluded from the Contract to the fullest extent permitted by law.

15.5 You will indemnify and keep us indemnified against all claims arising from any breach of your promises as above.

16. Sub-contracting and assignment

PC may subcontract any or all of its rights or obligations under this contract and pursuant to its requirements under the DPA with your consent, such consent not to be unreasonably withheld or delayed.

17. Confidential information

Neither party shall divulge any confidential information supplied to it about the other party in the course of this Contract or any pre-Contract discussions, other than information forming part of the public domain otherwise than through a breach of this clause or any other obligation of confidence.

18. General Matters

18.1 This Contract is the entire agreement between us and supersedes all representations, communications and prior agreements.

18.2 These Terms shall take precedence over any previous terms and conditions whatsoever. Terms may not be varied except by written agreement between PC and you.

18.3 You acknowledge entering into this Contract in reliance only on the representations, warranties, promises and terms contained or expressly referred to in this Contract.

18.4 Save as expressly set out in these Terms, neither party shall have any liability in respect of any other representation, warranty or promise unless it was made fraudulently.

18.5 No term of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

18.6 Any written notice required by this Contract should be sent to the address of the intended recipient. Notices can be sent by hand, by post or by fax.

18.7 The law of England and Wales shall govern this Contract and any dispute or claim in connection with it and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.