ATTAIN

These terms and conditions (Conditions) apply in respect of all work undertaken by **ATTAINAI LIMITED** (hereinafter 'the Supplier).

1. **Interpretation**

1.1. The definitions and interpretation set out in this condition 1 apply to the Contract:

Contract: the whole agreement made between the Supplier and the Client consisting of these Terms and Conditions and the Order;

Client: the person, firm or company referred to in the Order who purchases Services;

Client Material: all Documents, information and materials provided by the Client relating to the Services including (without limitation), computer programs, information, materials, copy, data, reports and specifications;

Deliverables: all Documents, products, digital content and/or materials in any form, including computer programs, data, reports and specifications (developed by The Supplier or its agents or subcontractors) and delivered in relation to the Services;

Digital Marketing Services: The Services as further described at condition 9 below;

Document: includes, without limitation, in addition to any document in writing, any drawing, plan, diagram, design, picture or other image, proof, disk or other device or record embodying information in any form;

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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, moral 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;

Order Agreement (or 'Order'): A commitment from the Client to purchase Services from the Supplier;

Pre-existing Materials: all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications;

Proposal: An offer made by the Supplier to the Client for the provision of Services;

Services: the services provided by the Supplier under the Contract as set out in the Order.

The Supplier: **ATTAINAI LIMITED** registered in England and Wales with company number **03810856**.

1.2. These Conditions shall prevail over any Client terms of business offered by or on behalf of the Client, or implied by law, trade custom, practice or course of dealing. The Client's standard terms and conditions (if any) shall be deemed to be expressly rejected by The Supplier.

2. **Formation of the Contract**

2.1. The Contract is deemed to commence on the earlier of:

2.1.1. when the Order is signed by the Client and is accepted in writing by the Supplier; or

2.1.2. by The Supplier starting to provide the Services.

2.2 Any Proposal is valid for a period of 28 days from its date, provided that the Supplier has not previously withdrawn it in writing.

The Client acknowledges that it enters into the Contract in the course of its business and not as a consumer.

3. **Commencement of the Services**

3.1. The Services shall be provided by the Supplier to the Client from the date agreed by the parties on the Order or if earlier the date referred to at condition 2.1.2.

4. **The Supplier's Obligations**

4.1. The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Client, in accordance with the Order.

4.2. The Supplier shall use reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

5. **Client's Obligations**

5.1. The Client shall:

5.1.1. co-operate with the Supplier in all matters relating to the Services;

5.1.2. provide to the Supplier, in a timely manner, such Client Material and other information as the Supplier may reasonably require and ensure that such information is accurate in all material respects;

5.1.3. ensure that all Client Material is owned by the Client, or, if not, ensure that the Client has permission from the legal owner to enable the Supplier to legitimately use the Client material in the provision of the Services;

5.2. If the Client believes that the design and/or artwork does not conform to the agreed description in the Order, then it shall notify the Supplier within 48 hours of receiving the same. If no notification is received, then the design and/or artwork shall be deemed accepted, conforming to the description of the Services in every respect. If the Supplier agrees that the design and/or artwork does not conform to the agreed description in the Order and the Client notifies the Supplier in accordance with clause 6.9, the Supplier will rectify the design and/or artwork at no additional cost to the Client.

5.3. Where the Client provides content, the Supplier will use the content as supplied and the Client remains responsible for the completeness and accuracy of the same in terms of spelling, grammar and meaning.

5.4. Where the Supplier provides print-ready or web-based content, it is the Client's responsibility to check the content is accurate before the site goes live or the artwork is sent to print.

5.5. The Client acknowledges that the late supply of Client Material may have an impact on the Supplier's ability to deliver the Services. If the Supplier'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, the Supplier 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.

5.6. The Client shall indemnify the Supplier, from and against, all costs, charges or losses sustained or incurred by the Supplier 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 the Supplier confirming such costs, charges and losses to the Client in writing.

5.7. The Client shall indemnify the Supplier against all losses, costs or charges it may incur arising as a result of any action, claim or threatened claim (as applicable) that the Supplier's use of the Client Material in accordance with the Contract constitutes an infringement of the intellectual property rights of a third party .

5.8. The Client shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 6 months after the last date of supply of the Services, solicit or entice away from the Supplier or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

5.9. Any consent given by the Supplier in accordance with condition 5.5 shall be subject to the Client paying to the Supplier a sum equivalent to 100% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 100% of the annual remuneration to be paid by the Client to that employee, consultant or subcontractor.

6. **Charges and Payment**

6.1. In consideration of the provision of the Services by the Supplier, the Client shall pay the charges as set out in the Order.

6.2. The Client shall pay each invoice submitted by the Supplier:

6.2.1. within 7 days of the date of the invoice (unless otherwise agreed within the Order); and

6.2.2. in full and in cleared funds to a bank account nominated in writing by the Supplier.

6.3. If invoices are not paid with immediate effect, the Supplier has the right to desist working on the project until payment is made. Any other payment terms agreed between the Client and the Supplier must be confirmed in writing by the Supplier.

6.4. All charges quoted to the Client shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;

6.5. Unless otherwise stated in writing any price and daily rate contained in the Order excludes:

6.5.1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred in connection with the Services, and the cost of any materials or disbursements. Such expenses, materials or disbursements shall be invoiced to the Client at cost. These costs will be agreed in advance and in line with the Supplier's Travel Policy; and

6.5.2. VAT, which the Supplier shall add to its invoices at the appropriate rate.

6.6. All additional work requested by the Client, which is requested following commencement of the Services and which is outside the scope of the Order (including any services necessarily procured in order to carry out the Services) shall be regarded as additional to the cost given in the Order and will be invoiced separately at the rates contained in the current Supplier rate card and subject to formal change request.

6.7. All charges listed in the Proposal are estimates and are subject to final confirmation of technical specification.

6.8. The Client shall be entitled to request up to two (2) amendments to the design work/artwork supplied for approval. Any amendments requested by the Client in addition to the two (2) permitted amendments will be deemed to be additional work and will be charged in line with a change request.

6.9. Once the Client has approved the Deliverables all further design work requested by the Client will be charged in accordance with the current rate card of the Supplier.

6.10. The parties agree that the Supplier may review its standard hourly fee rates at any time, provided that such charges cannot be increased more than once in any 12 (twelve) month period. The Supplier will provide the Client with written notice of any such increase one (1) month before the proposed date of the increase. If such increase is not acceptable to the Client, it may, within two (2) weeks of such notice being received or deemed to have been received in accordance with this condition 6.11, terminate the Contract by giving three (3) months written notice to the Supplier.

6.11. Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Supplier on the Due Date, the Supplier may:

6.11.1. charge interest on such sum under the Late Payment of Commercial Debts (Interest) Act 1998; from the Due Date , accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Client shall pay the interest immediately on demand; and

6.11.2. suspend all Services until payment has been made in full.

6.12. Time for payment shall be of the essence of the Contract.

6.13. All sums payable to the Supplier under the Contract shall become due immediately on its termination. This condition 6.14 is without prejudice to any right to claim for interest.

6.14. The Supplier may, without prejudice to any other rights it may have, set off any liability of the Client to the Supplier against any liability of the Supplier to the Client.

7. Website Design and Development

7.1. Where requested by the Client, the Supplier will design and build a website or develop the Client's website based on the Order agreed between the Client and the Supplier.

7.2. Payment for the Services shall be made in accordance with condition 6 above and the Order. The balance of the Supplier's charges must be paid prior to the website going live. If any charges are not paid on or before the date for payment, the Supplier may suspend the provision of the Services and the Supplier will not upload the website to the Client's server or supply the website files to the Client for use on any third party hosting server.

7.3. Once the Supplier has been paid in full for its website design and development services, the Supplier will provide a version of the Client's website to the Client for the Client's review and approval. If the Client believes that the website design and/or development does not conform to the Order then it shall notify the Supplier within 3 (three) days of receiving the version of the website. If no notification is received within 3 (three) days of receiving the final version of the website then the website shall be deemed accepted and to conform to the description of the Services in every respect. Once approval has been given by any means, which can include by email or verbally, the Supplier will release the website to the Client. On approval, the Supplier will have no liability for any errors or downtime due to changes being made to the website by the Client or any third parties.

7.4. The Supplier reserves the right to refuse to handle any material that it considers to be offensive, illegal or controversial.

7.5. Unless agreed otherwise, the Client agrees that the Supplier shall be free to use any ideas, concepts, know how or techniques used in the construction of the Client's website for any purpose whatsoever, including, but not limited to, developing, manufacturing, and marketing products and any other items incorporating such information.

8. **Website Hosting and Maintenance Services**

8.1. Where requested by the Client, the Supplier will procure website hosting and maintenance services. The Supplier will use reasonable endeavours to provide a reliable and professional service.

8.2. Payment for hosting and maintenance must be paid in advance unless agreed otherwise. The Supplier reserves the right to deactivate the Client's website where the hosting and/or maintenance fees are not paid on time. The Supplier may charge an administration fee for reactivating the Client's website.

8.3. The Supplier cannot guarantee that website hosting will be available in the event of a failure beyond the Supplier's control.

8.4. For the purpose of maintenance services, website hosting may have to be suspended for short periods of time. In the event of maintenance, the Supplier will notify the Client of any such periods 28 days in advance.

9. **Digital Marketing Services**

9.1. The Supplier will provide the Digital Marketing Services detailed in the Order.

9.2. Where the Supplier recommends that the Client takes implementation actions (physical or technical) in order to facilitate the Services detailed in this condition 9, then the Client agrees to implement such recommendations within 48 hours. Where the Client fails to do so it acknowledges that the Supplier will not be liable for failing to perform such services.

10. **Intellectual Property Rights**

10.1. Unless otherwise agreed in writing (for example, where the Supplier agree to licence the design and code of a website to the Client for an annual fee), all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials (excluding any Client Material) shall be owned by the Supplier.

10.2. The Client acknowledges that where the Supplier does not own the Pre-existing Materials, the Client's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence from the relevant licensor.

10.3. Excluding Pre-existing Materials that the Supplier does not own, the Supplier licenses all such rights referred to in condition 10.1 to the Client free of charge and on a nonexclusive, worldwide basis to such extent as is necessary to enable the Client to make use of the website, the Deliverables and the Services. This licence is terminated with immediate effect as soon as any invoice becomes overdue. In the event that the Client wishes to use the Deliverables and/or any of the Intellectual Property Rights for purposes outside of the scope of the Contract, as set out in the Order, prior to any such use the Client shall obtain the prior written agreement of the Supplier on commercial terms to be agreed.

10.4. The Client grants the Supplier a licence to the Client Material in order to provide the Services.

10.5. The Client acknowledges that it is not the obligation of the Supplier to search for registered trademarks or to contact the Intellectual Property Office on behalf of the Client unless specifically requested by the Client, agreed by the Supplier within the contract and on confirmation of the quotation.

11. **Limitation of Liability**

11.1. This condition 11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Client in respect of: any breach of the Contract;

11.1.1. any use made by the Client of the Services, the Deliverables or any part of them; and

11.1.2. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

11.2. The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1 million per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

11.3. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.4. Nothing in these Conditions limits any liability of the Supplier which cannot legally be limited, including liability for:

11.4.1. for death or personal injury resulting from negligence; or

11.4.2. for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Supplier.

11.4.3. breach of the terms as to title, insofar as they are implied by law.

11.5. Subject to condition 11.3 and condition 11.4 the Supplier shall not be liable for loss of business; or loss of goods; or loss of contract; or loss of use, for example, including but not limited to the Client's website being unavailable; or loss of corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

11.6. The Supplier'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 an amount equal to the charges paid for the Services in the twelve months immediately preceding the event which gave rise to the claim.

12. **Data Protection**

12.1. The Client agrees to comply with its obligations as a data controller under the provisions of the Data Protection Act 2018 and any other relevant Data Protection Legislation. The Client acknowledges and agrees the Supplier will be a data processor for the purposes of the Data Protection Act 2018 and any other relevant Data Protection Legislation.

13. **Termination**

13.1. Either party may terminate the Contract without liability to the other on giving the other no less than 90 days' written notice prior to the contract expiry date.

13.2. Without affecting any other right or remedy available to it, either party to the Contract may terminate it with immediate effect by giving written notice to the other party if:

13.2.1. the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

13.2.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

13.2.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

13.2.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.3. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if:

13.3.1. the Client fails to pay any amount due under the Contract on the due date for payment;

13.4. On termination of the Contract for whatever reason:

13.4.1. the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect; and

13.4.2. termination of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination , including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination .

13.5. The Supplier may terminate the Contract on one month's written notice if there is a change of "control" (has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly) of the Client.

13.6. On termination of the Contract for any reason:

13.6.1. the Client shall immediately pay to the Supplier all outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

13.6.2. 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.

13.7. On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect: Clause 10 (Intellectual Property Rights); Clause 11 (Limitation of Liability); Clause 12 (Data Protection); Clause 13 (Termination); and Clause 15.12.

ATTAIN

14. **Confidentiality and the Supplier's Property**

14.1. The Client shall keep in strict confidence all technical or commercial know how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Client may obtain.

14.2. The Client may disclose such information:

14.2.1. to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Client's obligations under the Contract; and

14.2.2. as may be required by law, court order or any governmental or regulatory authority.

14.3. The Client shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition.

14.4. The Client shall not use any such information for any purpose other than to perform its obligations under the Contract.

14.5. All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Client (including Pre-existing Materials and The Supplier's Equipment) shall, at all times remain the exclusive property of the Supplier, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

15. **General**

15.1. The Supplier 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) strikes, lockouts or other industrial disputes (whether involving the workforce of the Supplier or any other party), 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, storm or default of the Suppliers or subcontractors.

15.2. No variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15.3. 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.

15.4. If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or 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. If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.5. The Contract along with the Order, constitute the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. In the event that there is a difference between the Contract and the Order, the terms of the Order shall prevail.

15.6. 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).

15.7. The Client shall not, without the prior written consent of the Supplier, assign, any of its rights or obligations under the Contract. The Supplier may at any time assign, 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.

15.8. 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.

15.9. A person who is not a party to the Contract shall not have any rights under or in connection with it either under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

15.10. Any notice required to be given under the Contract shall be in writing shall be sent by email to info@attain.uk.com or the address specified in the Order.

15.11. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales. 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.

15.12. The Supplier reserves the right to amend these Terms & Conditions from time to time, as and when necessary, including to comply with legislative changes. These changes will be reflected on the Supplier's website and the Supplier does not have an obligation to notify the Client of these changes.