

- (1) Brilliant Limited whose registered office is at Unit 73, Greenway Business Centre, Harlow Business Park, Harlow, Essex. CM19 5QE ('Brilliant Limited'); and
- (2) Buyer whose [registered office or principal place of business] is at the Buyer')

NOW IT IS AGREED as follows:

1 Definitions

In these terms, unless the context otherwise requires, the following definitions will apply:

- 1.1 'Media' means the carrier media specified in the Specification on which the Artwork or Software is recorded or printed and delivered to the Buyer.
- 1.2 'Quotation' means the quotation provided by Brilliant Limited to the Buyer.

'Software' means the computer program(s) in object code form only as described briefly in the Specification including any copies but excluding source code material and all preparatory design material.

'Artwork' means the digital file containing the creative print origination information required for printing.
- 1.4 'Specification' means the specification setting out the facilities and functions of the Software agreed between the parties.
- 1.5 'use the Software' means to load the Software into and store, run and display the Software on the Equipment in accordance with these terms.

2 Grant of licence

Subject to these terms, Brilliant Limited grants to the Buyer a non-exclusive and non-transferable licence ('the Licence') to use the Licensed Materials in the United Kingdom.

3 Delivery and installation

- 3.1 Brilliant Limited will deliver one copy of the Artwork or Software on the Media to the Buyer.
- 3.2 The Buyer is responsible for ensuring that all equipment is installed and fully operational prior to the due date for delivery of the Artwork or Software.
- 3.3 The Buyer is responsible for print production of Artwork (unless specified otherwise) or the installation of the Artwork or Software on its equipment in accordance with the print specification or installation guide issued by Brilliant Limited.

- 3.4 Brilliant Limited will use its reasonable endeavours to achieve delivery or installation by any specified or requested date but each such date is to be treated as an estimate only and time shall not be of the essence. Where payment of any part of the fee or any charges is to be made before delivery or installation of the Artwork or Software, Brilliant Limited may withhold delivery or installation until such payments have been received.

- 3.5 Risk in the Media will pass to the Buyer on delivery to the Buyer.

4 Permitted use

- 4.1 The Buyer may use the Artwork or Software only on equipment at any location specified in the Quotation. The use of the Artwork or Software on different equipment or at a different location requires the prior written consent of Brilliant Limited.
- 4.2 The Buyer is permitted to observe, study or test the functioning of the Artwork or Software in order to determine the ideas and principles that underlie any element of the Artwork or Software while using the Artwork or Software in accordance with these terms.
- 4.3 The Buyer shall not translate or adapt the Licensed Materials for any purpose nor arrange or create derivative works based on the Artwork or Software without Brilliant Limited's express written consent in each case.
- 4.4 The Buyer shall not transfer or distribute (whether by licence, loan rental, sale or otherwise) all or any part of the Licensed Materials to any other person.

- 4.5 The Buyer shall not make for any purpose, including (without limitation) for error correction, any alterations, modifications, additions or enhancements to the Artwork or Software nor permit the whole or any part of the Artwork or Software to be combined with or become incorporated in any other printed item or program except to the extent permitted by these terms without Brilliant Limited's prior written consent.

5 Extent of permitted reproduction

- 5.1 The Buyer is permitted to make a back-up copy of the Artwork or Software in so far as the making of that copy is necessary for the use of the Artwork or Software permitted by this Licence. Such copy will be the property of Brilliant Limited.
- 5.2 The Buyer shall effect and maintain adequate security measures to safeguard the Licensed Materials from unauthorised access use or copying.
- 5.3 The Buyer shall keep accurate and up to date written records of the Buyer's use, copying and disclosure of the

Artwork or Software as Brilliant Limited may from time to time reasonably require or, in default of any specific requirement by Brilliant Limited, then in accordance with good data processing practice and shall allow Brilliant Limited, on request, to inspect and take copies of such records from time to time.

6 Decompilation

6.1 The Buyer shall not nor permit others to decompile, reverse-engineer or dis-assemble the Artwork or Software or any part except that the Buyer may decompile the Artwork or Software to the extent permitted by and subject to the provisions of the EC Software Directive as enacted by the Copyright, Designs and Patents Act 1988 as amended where this is indispensable to obtain the information necessary to achieve the interoperability of an independently created program with the Artwork or Software or with another program ('the Information') and the Information is not readily available from Brilliant Limited or elsewhere.

6.2 With respect to the Information, whether provided by Brilliant Limited or obtained by decompilation, the Buyer shall not nor permit others to:

6.2.1 use the Information for any purpose other than to achieve the inter-operability of an independently created artwork or program with the Artwork or Software or other programs; or

6.2.2 supply the Information to any other person except when necessary for the interoperability of the independently created artwork or programme with the Artwork or Software or other programs; or

6.2.3 use the Information for the development, production or marketing of a computer program substantially similar in its expression to the Artwork or Software, or for any other copyright infringing act; or

6.2.4 use the Information in a manner which unreasonably prejudices Brilliant Limited's legitimate interests or conflicts with a normal exploitation of the Artwork or Software.

7 Payment terms

7.1 The Buyer will pay to Brilliant Limited all fees and charges which fall due in the amounts and at the times specified in the Quotation or otherwise invoiced by Brilliant Limited from time to time. Where applicable, VAT and any other taxes duties or levies will be paid additionally by the Buyer at the then prevailing rate.

7.2 All sums due under these terms will be paid by the Buyer within 7 days of the date of receipt of invoice or on the due date for payment specified in the Quotation, if earlier.

7.3 If any sum payable to Brilliant Limited is in arrears for more than 30 days after the due date, Brilliant Limited reserves the right, without prejudice to any other right

or remedy, to charge interest on such overdue sum on a day to day basis from the original due date until paid in full at a rate of 3% above Lloyds TSB plc base lending rate in force from time to time.

8 Proprietary rights

8.1 The Buyer will not acquire any title, copyright or other proprietary rights in the Licensed Materials or any copies of them.

8.2 The Buyer agrees not to remove, suppress or modify in any way any proprietary marking, including any trade mark or copyright notice, on or in the Artwork or Software or which are visible during its operation or which is on the Media. The Buyer shall incorporate such proprietary markings in any back-up copies.

8.3 The Buyer shall notify Brilliant Limited immediately if the Buyer becomes aware of any unauthorised access to, use or copying of any part of the Licensed Materials by any person.

9 Defects warranty

9.1 Brilliant Limited does not warrant that the operation of the Artwork or Software will be uninterrupted or error free or that in the case of a web site or software, the Buyer's web pages will be secure against hackers or other infiltration

9.2 Brilliant Limited's obligations and the Buyer's exclusive remedy is limited to a refund of the fee paid if in Brilliant Limited's reasonable opinion it is unable to rectify such non-conformance.

9.3 The Buyer acknowledges that it is the Buyer's responsibility to ensure that the facilities and functions of the Licensed Materials meet the Buyer's requirements.

9.4 Brilliant Limited will not be liable for any failure of the Artwork or Software to provide any facility or function not described in the Specification or for any failure of the Artwork or Software attributable to any modification (whether by alteration, deletion, addition or otherwise) to the Artwork or Software by either the Buyer in default of its obligations under these terms or by the persons other than Brilliant Limited or combination of the Artwork or Software with other Artwork or Software or equipment without Brilliant Limited's express prior written consent.

9.6 If a problem is found upon investigation not to be Brilliant Limited's responsibility, Brilliant Limited may charge the Buyer immediately for all reasonable costs and expenses incurred by Brilliant Limited in the course of or in consequence of such investigation.

10 Limitation of liability

10.1 The Buyer acknowledges that Brilliant Limited's obligations and liabilities in respect of the Licensed Materials are exhaustively defined in these terms. The Buyer agrees that the express obligations and warranties made by Brilliant Limited in these terms are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to anything supplied or services provided under or in connection with these terms including (without limitation) as to the condition, quality, performance, merchantability or fitness for purpose of the Licensed Materials or any part of them.

10.2 The Buyer is responsible for the consequences of any use of the Licensed Materials. Brilliant Limited will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused, whether arising under contract, tort (including negligence) or otherwise, including (without limitation) loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated saving, even if Brilliant Limited has been advised of their possibility.

10.3 The Buyer agrees that except as expressly provided in these terms Brilliant Limited will not be under any liability of any kind whatever and however caused arising directly or indirectly. The Buyer will indemnify Brilliant Limited in respect of any third party claim for any injury, loss, damage or expense occasioned by or arising directly or indirectly from the Buyer's possession, operation or use of the Licensed Materials except and in so far as Brilliant Limited is liable as expressly provided in these terms.

10.4 The Buyer acknowledges and agrees that the allocation of risk contained in these terms is reflected in the fee and is also a recognition of the fact that the Artwork or Software cannot be tested in every possible combination and it is not within Brilliant Limited's control how and for what purpose the Licensed Materials are used by the Buyer.

11 Buyer's information

11.1 The Buyer warrants that the name, address and payment information it has provided to Brilliant Limited is correct and it agrees to notify Brilliant Limited of any changes in such details. The Buyer agrees that Brilliant Limited may disclose the Buyer's name and address where there is any complaint about the content of its pages or in relation to goods or services advertised there. The Buyer warrants that has the legal right and ability to enter into these terms and that it will use Brilliant Limited's services in accordance with these terms.

11.2 The Buyer warrants the accuracy truthfulness and reliability of the information (including statements of opinion or advice) which it places within its printed items or on its web pages. The Buyer is solely responsible for the accuracy of files provided to the Buyer by Brilliant Limited. Brilliant Limited takes all reasonable steps to ensure the Buyer has an opportunity to make changes prior to the final print or webpages.

11.4 The Buyer will indemnify Brilliant Limited for its reasonable costs and all damages awarded under any final judgment by a court of competent jurisdiction or agreed by Brilliant Limited in final settlement to the extent any material provided by the Buyer and used by Brilliant Limited in accordance with these terms infringes the copyright trade marks or trade secrets of any third party or and the intellectual property rights of any third party.

12 Use of web pages (Hosted on the Brilliant Limited Web Server)

12.1 Brilliant Limited will not monitor the contents of the Buyer's pages. The Buyer is solely responsible for the contents of its web pages.

12.2 The Buyer's web pages are subject to withdrawal without notice by Brilliant Limited upon complaint about their content where Brilliant Limited at its sole discretion deems this necessary or to comply with legislation or regulation or otherwise in order to prevent damage (or the likelihood or threat thereof) to Brilliant Limited's system or reputation or otherwise for security, safety or continued operation.

12.3 Brilliant Limited may make any disclosures to the relevant authorities or other bodies that it reasonably considers necessary or appropriate concerning the Buyer's web pages.

12.4 The Buyer warrants that it is authorised to promote any information which it does so on its web pages.

12.5 The Buyer agrees to keep secure its Brilliant Limited identification, password and other confidential information relating to its account and is responsible for their use. Access using the Buyer's account ID and password will be deemed to be the Buyer's use. The Buyer must advise Brilliant Limited immediately if its password is stolen or if an unauthorised third party uses its ID and co-operate with Brilliant Limited, its agents and sub-contractors and the police concerning any legal action arising from the misuse of the Buyer's account.

12.6 The Buyer shall notify Brilliant Limited if it finds evidence of infiltration and co-operate with Brilliant Limited in taking steps to try to prevent it and to notify the proper authorities.

- 12.7 The Buyer may not, under any circumstances, use its web pages to do any of the following:-
Publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
Threaten, harass, stalk, abuse, disrupt or otherwise violate the legal rights (including rights of privacy and publicity) of others;
Engage in illegal or unlawful activities;
Make available/upload files that contain Software or other material protected by intellectual property laws (or by rights of privacy or publicity) unless the Buyer own or control the rights thereto or have received all necessary consents;
Make available/upload files that contain a virus or corrupted data;
Falsify the source or origin of Software or other material contained in a file that the Buyer makes available on the Buyer's web pages;
Act, or fail to act, in the use of its web pages, in a manner that is contrary to applicable law or regulation;
Publish, post, distribute or disseminate adult material - includes all pornography, erotic images, or otherwise lewd or obscene content. The designation of "adult material" is left entirely to the discretion of Brilliant Limited.
The Buyer will be liable for and by its use of the system the Buyer agree to indemnify Brilliant Limited for its reasonable legal costs incurred in defending any other criminal or civil action caused by the Buyer's page content or use of the system and the Buyer agree to indemnify Brilliant Limited for any fines, damages or other penalties or financial sanctions which are awarded against it or become payable by it at any time by a court of law or which Brilliant Limited pays as a result of settling such an action upon legal advice. For the avoidance of doubt, The Buyer agree to indemnify Brilliant Limited from and against any and all liabilities, expenses (including legal fees) and damages arising out of claims based upon or relating to the use of the Buyer's web-pages, including any claim of libel, defamation, violation of rights of privacy or publicity, loss of service, non-supply, fraud, infringement of intellectual property or other rights or other claims whatsoever.
- 12.8 Brilliant Limited reserves the right of root access on the system and it is a condition on use that the Buyer does not attempt to gain root access. Should the Buyer find or suspect that there has been a breach of network access then it should inform Brilliant Limited immediately.
- 12.9 If the Buyer surpasses its bandwidth usage limit and uses server resources to an extent that jeopardizes server performance, Brilliant Limited will contact the Buyer in order to try to resolve the situation but Brilliant Limited reserves the right to impose such limits or take such action as it considers necessary to protect the interests of its clients and business.
- 13 Advertising
- If the Buyer advertises or offers to sell goods or services via its web pages, it undertakes to conform with all applicable legislation and regulations and its own terms of trading.
- 14 Domain names
- 14.1 Brilliant Limited will not be responsible for domain name or other related charges. Payment of such charges are a matter for the Buyer and Brilliant Limited will accept no liability in relation to payment or non-payment of these charges or any dispute in relation to domain names.
- 14.2 Brilliant Limited reserves the right in the event of disputes concerning domain names to suspend the use of domains, to impose a homepage redirect system or other systems, which is at its sole discretion, considers necessary or prudent. Brilliant Limited will usually only act upon a court order or legal advice in relation to domain disputes and will seek wherever possible to notify the Buyer of any action to be taken in advance. Brilliant Limited will not accept any liability for actions taken in relation to name disputes and the Buyer hereby indemnifies Brilliant Limited for any legal or other costs, charges, damages, fines or other financial consequences in relation thereto.
- 15 Mail (Hosted on the Brilliant Limited Web Server)
- Brilliant Limited will under no circumstances monitor the content of any client mail routed via Brilliant Limited or systems hosted by Brilliant Limited, save under authority of law or court order. Mail is entirely the responsibility of the Buyer and the Buyer is responsible for sending mail in accordance with any relevant legislation (including data protection legislation) and for sending the same in a secure manner. Brilliant Limited will take reasonable steps to ensure accurate and prompt routing of messages but will not accept any liability for not-receipt or misrouting or any other failure of mail. The Buyer is reminded that sensitive mail should be sent with the use of suitable encryption procedures. Brilliant Limited will not accept responsibility for losses or data or other information due to hardware failures. Back up of the Buyer's mail facilities and web pages is entirely the responsibility of the Buyer.
- 16 Termination
- 16.1 If the Buyer:
- 16.1.2 fails to comply with any of the provisions of these terms and (in the case of a failure capable of being remedied) does not rectify such non-compliance within 14 working days of Brilliant Limited's written notice of it; or

16.1.2 convenes any meeting of creditors or passes a resolution for winding up or suffers a petition for winding up; or

16.1.3 has an administrative receiver or receiver appointed over the whole or part of its assets or suffers the appointment of an administrator; or

16.1.4 being an individual commits any act of bankruptcy or compounds with his creditors or comes to any arrangements with any creditors, then (and in any such case) Brilliant Limited may, without prejudice to any other of its rights or remedies and without being liable to the Buyer for any loss or damage which may be occasioned, terminate these terms (and accordingly the Licence) with immediate effect without notice to the Buyer.

16.2 Brilliant Limited may in any event terminate these terms (and accordingly the Licence) at any time by 30 days' written notice to the Buyer.

17 Post termination

17.1 On termination of these terms however caused the Buyer's authorisation to use the Licensed Materials will automatically cease and the Buyer undertakes immediately to cease to use the Licensed Materials and either return to Brilliant Limited the Artwork or Software and all copies of it or, if requested by Brilliant Limited, delete, destroy or otherwise make permanently unusable the Artwork or Software and all whole or partial copies of the Artwork or Software within the Buyer's control or possession.

18 Assignment

Brilliant Limited may license or sub-contract all or any part of its rights and obligations under these terms without the Buyer's consent.

19 Severability

If any part of these terms is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of the terms which will continue to be valid and enforceable to the fullest extent permitted by law.

20 Waiver

No delay or failure by Brilliant Limited to exercise any of its powers, rights or remedies under these terms will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing. The remedies provided in these terms are cumulative and not exclusive of any remedies provided by law.

21 Entire agreement

21.1 These terms are the complete and exclusive statement of the terms between the parties relating to the subject matter of these terms and supersede all previous communications, representations and arrangements, written or oral. The Buyer acknowledges that no reliance is placed on any representation made but not embodied in these terms. The printed terms and conditions of any purchase order or other correspondence and documents of the Buyer issued in connection with these terms will not apply unless expressly accepted in writing by Brilliant Limited.

21.2 Brilliant Limited will have the right to vary these terms on giving the Buyer notice of such variation which notice may be by way of an announcement on Brilliant Limited's website. The Buyer will be responsible for reviewing regularly information posted online in Brilliant Limited's terms of trading page.

22 Notice

22.1 (Except as provided at clause 21.2) all notices given under these terms will be in writing and will be sent to the address of the recipient set out on the front page of these terms or such other address as the recipient may have notified from time to time.

22.2 Any such notice may be delivered personally by first class pre-paid letter or facsimile transmission and will be deemed to have been received at the time of delivery if by hand, 48 hours after mailing if sent by first class post or immediately on transmission (with a valid transmission report) if sent by facsimile transmission.

23 Governing law

These terms will be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales. Headings have been included for convenience only and will not be used in construing any provision in these terms.