

KISS COMPANIES: TERMS AND CONDITIONS OF BUSINESS

NOTE: Your attention is particularly drawn to the contents of clauses 6.5, 6.6 and 8.

1 INTERPRETATION

1.1 The following definitions are used in these Conditions:

Authorised Sub-Processor	a natural or legal person, agency or other body who provides information technology services that KISS uses in the course of providing the Services as referred to in the Proposal and pre-approved by the Client;
Business Day	a day (except a Saturday or Sunday) when banks in London are open for business;
Charges	the charges payable by the Client for the supply of the Services in accordance with clause 5;
Client	the person or firm who purchases Services from KISS;
Client Material	any material or content provided by the Client or licensed directly to the Client by a third party;
Commencement Date	has the meaning set out in clause 2.1;
Conditions	these terms and conditions as amended from time to time in accordance with clause 12.7;
Contract	the contract between KISS and the Client for the supply of Services, which is subject to these Conditions;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures

as defined in the Data Protection Laws;

Data Protection Laws

means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (**DPA 2018**); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);

Force Majeure Event

an event beyond the reasonable control of KISS including industrial disputes, failure of a utility service or transport network, computer failure, failure of a communications network, war, riot, civil commotion, malicious damage, compliance with any law, regulation or, accident, breakdown of plant or machinery, act of God, fire, flood, storm or default of suppliers or subcontractors

Intellectual Property Rights

all patents, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, moral rights, rights in confidential information 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;

IPR Arising	all Intellectual Property Rights in or arising in connection with the Services, including in any Software or Site, or which are contained in the KISS Materials (except Intellectual Property Rights in any Client Material);
KISS	the supplier of the Services, being KISS Communications Limited, KISS PR Limited, KISS Digital Limited or any affiliated company as the case may be, as set out in the Proposal;
KISS Materials	all materials, equipment, documents and other property which is supplied to the Client, including proposals, quotes, estimates, designs, artwork, reports, software (on any media) and training materials;
Ongoing Services	any Services set out in the Proposal in respect of which ongoing periodical payments are due to be made, including website hosting, licensing of Software, supply of online dashboards, supply of e-commerce and content management systems and other ongoing services;
Order	the Client's written acceptance of the Proposal;
Proposal	the Proposal or quotation such describing the services provided by KISS to the Client;
Services	the services to be supplied by KISS to the Client as set out in the Proposal;
Site	websites, intranets, web app and mobile apps to be designed and/or developed as part of the Services;

Site Release	Release of the Site to the Client having been developed by KISS or, as the case may be, commencement of hosting of the operational Site by KISS;
Software	any software or code stated in the Proposal to be supplied as part of the Services (including any updates or maintenance thereto agreed to be provided by KISS);
Sub-Processor	has the meaning given to it in clause 8.7;
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
Warranty Period	the period of 90 days from delivery of Software to the Client and/or Site Release as the case may be

1.2 In these Conditions, the following rules apply:

- 1.2.1 any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.2 a reference to **writing** or **written** includes faxes and e-mails.

2 BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Client to buy Services in accordance with these Conditions. The Order is accepted when KISS issues a written acceptance of the Order, at which point the Contract comes into existence ("Commencement Date").
- 2.2 The Contract is the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of KISS which is not contained in the Proposal or these Conditions.

- 2.3 Any descriptions or illustrations supplied by KISS are for the purpose of giving an approximate idea of the Services they described, and are not part of the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which may otherwise be implied.
- 2.5 The Proposal does not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 In dealing with third parties KISS acts as principal and not agent for the Client.
- 2.7 In relation to any pitch or bid activity, and in return for KISS participating in that activity, the prospective Client agrees that clauses 6.1, 6.2, 6.3 and 7 below shall apply with immediate effect whether or not an Order is placed or a Contract comes into force. No licence in respect of IPR Arising is granted by KISS in the meantime.

3 SUPPLY OF SERVICES

- 3.1 KISS shall supply the Services to the Client in accordance with the Proposal in all material respects.
- 3.2 KISS shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time is not of the essence for performance of the Services.
- 3.3 KISS shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.
- 3.4 Any changes to the Services or the Proposal which are agreed between KISS and the Client shall be recorded in a new Proposal and a new Order, to which clauses 2.1 and 2.5 above will apply, and shall not otherwise be valid. KISS will not be obliged to agree to any changes to the Proposal and the Client acknowledges that agreement of a change may have a consequent impact on Charges and/or delivery times.
- 3.5 Use of Software may be subject to an annual charge which is set out in the Proposal. KISS shall not be obliged to provide any updates or maintenance in respect of any Software except to the extent expressly stated in the Proposal.

4 CLIENT'S OBLIGATIONS

- 4.1 The Client shall:

- 4.1.1 co-operate with KISS in all matters relating to the Services;
- 4.1.2 provide KISS with such information and materials as KISS may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 4.1.3 promptly approve and/or give comments on content and material sent to the Client for review;
- 4.1.4 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- 4.1.5 comply with all applicable laws and regulatory requirements and applicable codes of practice in making use of the Services, the Software and the KISS Materials and in operating the Site;
- 4.1.6 maintain the confidentiality and security of its internet account;
- 4.1.7 ensure the Client Material and any other content or material issued or approved by the Client or contained on or linked to the Site is complete and accurate, does not infringe any law, regulatory requirement or code of practice or the rights of any third party, and is not threatening, blasphemous, obscene, pornographic, seditious, offensive, or liable to incite racial hatred or acts of terrorism;
- 4.1.8 keep and maintain all KISS Materials at the Client's premises in safe custody at its own risk, maintain KISS Materials in good condition until returned to KISS, and not dispose of or use KISS Materials other than in accordance with KISS's written instructions or authorisation;
- 4.1.9 permit KISS to be named on the Site as designer and/or host of the Site (as the case may be) in such form as KISS reasonably requires;
- 4.1.10 not, directly or indirectly, solicit the employment of any of KISS's staff or subcontractors involved in performing the Services either during that involvement or within 6 months after their involvement is complete; and
- 4.1.11 except to the extent arising from KISS's negligence or wilful default, and to the extent such indemnity is prohibited by law, indemnify KISS for any loss, damage, claims, cost or expense suffered as a consequence of the performance of its Services (whether before or after termination of the Contract), including as a result of (i) any Client Material or any other content or material issued or approved by the Client or which is contained on or linked to the Site or which is posted on any social media on

the Client's behalf infringing any law, regulatory requirement or code of practice or the rights of any third party or (ii) any other breach of the contract by the Client.

- 4.2 In the event that the Client, or any firm, company or person on whose behalf the Client is acting, employs any of KISS's employees in breach of clause 4.1.10, the Client shall on demand pay to KISS liquidated damages equal to 12 months' gross salary of the employee in question. The parties confirm that the sum stated above is a genuine pre-estimate of KISS's loss.

5 CHARGES AND PAYMENT

- 5.1 The Charges for the Services and any payment instalments shall be as set out in the Proposal. KISS shall also be entitled to charge the Client for any expenses reasonably incurred in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of any materials, and for the cost of any media space, whether print, electronic or broadcast. The Client acknowledges that the materials and media space Charges may include an element of mark-up by KISS.
- 5.2 Unless otherwise specified in the Proposal, KISS shall invoice the Client monthly in arrears according to the proportion of the Services which are complete. Ongoing Services will be invoiced monthly in advance.
- 5.3 The Client shall pay each invoice submitted by KISS within 30 days of the date of the invoice.
- 5.4 All amounts payable by the Client are subject to the addition of applicable VAT.
- 5.5 The Client shall pay all amounts due under the Contract in full without any set-off, deduction or withholding except as required by law.
- 5.6 KISS reserves the right to withhold release of the Site, or commencement of hosting of the Site, or licensing of Software, until such time as all invoices in respect of website or Software development (as the case may be) have been paid in full.
- 5.7 Without limiting any other right or remedy of KISS, the Client will pay interest on any overdue payment at the rate of 4 per cent per annum above the Bank of England rate then current on a daily basis from the due date until the date of actual payment, whether before or after judgment.
- 5.8 KISS may increase its Charges for any Ongoing Service by giving the Client not less than three months' notice to expire no earlier than the anniversary of commencement of the relevant Ongoing Service.

6 OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

- 6.1 All IPR Arising shall be owned by KISS.
- 6.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on KISS obtaining a written licence from the relevant licensor on such terms as will entitle KISS to license such rights to the Client. The Client shall comply with the terms of any such licence.
- 6.3 All KISS Materials are the exclusive property of KISS, unless and until title is agreed specifically in writing to be transferred to Client. Until they have been returned to KISS, the Client shall be solely responsible for the safe keeping of the KISS Materials at the Client's sole risk and the Client will not use the KISS Materials for any purpose unless and until permitted by clauses 6.4 or 6.5.
- 6.4 The Client shall use the Software only in object code form for the purpose of processing the Client's data for normal business purposes, subject to any restrictions (including number of users) set out in the Proposal. The Client shall not, except to the extent obliged to be permitted by law, copy (except for backup purposes), develop, modify, adapt, alter, reverse engineer, decompile, disassemble or make error corrections to the Software or attempt to do so.
- 6.5 Subject to clauses 5.6, 6.2, 6.3 and 6.4 above, KISS licenses the Client to use the KISS Materials, the Software, the Site and the IPR Arising on a non-exclusive basis to such extent as is necessary to enable the Client to make reasonable use of the KISS Materials and the Services only for the purposes, on the media and in the locations specifically set out in the Proposal. The Client shall not be entitled to assign the licence set out above or to grant any sub-licences.
- 6.6 KISS may, in its absolute discretion, agree to extend the scope and/or terms of the licence in clause 6.5 in return for such payment and/or other obligations as KISS may require. Any such agreement shall be subject to clause 12.7.
- 6.7 The Client permits KISS to aggregate the Client and the Client's customers' data and information, and to store and analyse, query and integrate anonymised marketing, performance, analytics, statistical and other data in aggregated and non-aggregated form and the Client acknowledges and agrees that KISS may aggregate that data with other data for the purpose of supplying products and services to the Client and to existing and potential clients.

7 CONFIDENTIALITY

- 7.1 The parties 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 relevant party ("Receiving Party") by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain.

- 7.2 The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 7.3 KISS may, however, disclose the identity of the Client and brief details of the Services for its own marketing purposes.
- 7.4 This clause 7 shall survive termination of the Contract.

8 DATA PROTECTION

- 8.1 Each party shall comply with all applicable requirements of the Data Protection Laws. This clause 8.1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Laws.
- 8.2 The parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Controller and KISS is the Processor. The Proposal sets out the scope, nature and purpose of processing by KISS, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 8.3 The Client warrants, represents and undertakes, that:
 - 8.3.1 it has all necessary appropriate consents and notices in place to enable the lawful transfer of Personal Data to KISS and lawful collection of Personal Data by KISS on behalf of the Client for the duration and purposes of this Contract; and
 - 8.3.2 all instructions given by it to KISS in respect of the Personal Data shall at all times be in accordance with Data Protection Laws.
- 8.4 Without prejudice to the generality of clause 8.1, KISS shall, in relation to any Personal Data processed in connection with the performance of its obligations under this Contract:
 - 8.4.1 process the Personal Data only on and in accordance with the Client's documented instructions as set out in the Proposal and any new Proposal prepared under clause 3.4, (the "Processing Instructions"), unless KISS is required pursuant to Data Protection Laws to otherwise process that Personal Data. Where this is the case, KISS shall promptly notify the Client of this before performing the processing required

by Data Protection Laws, unless the Data Protection Laws prohibit KISS from so notifying the Client;

- 8.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 8.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 8.4.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (a) the Client (or KISS, where the Personal Data is being transferred to a Sub-Processor or Authorised Sub-Processor) has provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) KISS complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) KISS complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- 8.4.5 notify the Client without undue delay on becoming aware of a Personal Data Breach;
- 8.4.6 assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- 8.4.7 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Data Protection Laws to store the Personal Data; and
 - 8.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 8 and allow for and contribute to audits, including inspections, by the Client (or another auditor mandated by the Client).
- 8.5 The Client shall pay KISS's charges for providing assistance or information or participation in audits under clauses 8.4.5, 8.4.6 and 8.4.8 at KISS's then prevailing rates.
- 8.6 KISS shall promptly inform the Client if KISS becomes aware of a Processing Instruction that, in KISS's opinion, infringes Data Protection Laws, provided that this does not relieve the Client of its responsibilities under clause 8.4, and that once KISS has informed the Client, KISS shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities arising from or in connection with any processing in accordance with those Processing Instructions, subject to clause 9.1.
- 8.7 KISS shall not engage any person to carry out sub-processing of the personal data (a "Sub-Processor") without the Client's written authorisation of that specific Sub-Processor (such authorisation not to be unreasonably withheld, conditioned or delayed) provided that the Client authorises the appointment of the Authorised Sub-Processors .
- 8.8 KISS shall:
 - 8.8.1 prior to the relevant Sub-Processor or Authorised Sub-Processor carrying out any processing activities in respect of the Personal Data, appoint each Sub-Processor or Authorised Sub-Processor under a written contract containing materially the same obligations as this clause 8 that is enforceable by KISS; and
 - 8.8.2 remain fully liable for all the acts and omissions of each Sub-Processor or Authorised Sub-Processor as if they were its own.
- 8.9 This clause 8 shall survive termination of the Contract.

9 WARRANTIES AND LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude KISS's liability for:
 - 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 9.1.2 fraud or fraudulent misrepresentation; or

- 9.1.3 any other liability which may not be excluded by law.
- 9.2 KISS warrants to the Client that the Services will be provided using reasonable care and skill.
- 9.3 KISS warrants that the Software and the Site (to the extent developed by KISS) will for the Warranty Period conform in all material respects to the specification set out in the Proposal. Subject to clause 9.4, if, within the Warranty Period, the Client notifies KISS in writing of any defect or fault in consequence of which the Software or the Site fails to conform in all material respects with that specification and in respect of which KISS is liable under these Conditions, KISS will, at its option, and as the Client's sole remedy:
 - 9.3.1 remedy the defect; or
 - 9.3.2 provide an appropriate partial refund of its Charges (as reasonably determined by KISS); or
 - 9.3.3 in the event that the relevant Software or the Site (as the case may be) is as a consequence of the defect or fault substantially unusable, terminate the Client's licence to use the Software or Site (as the case may be) and refund all Charges relating to the Software or Site in question against return of the Software and all KISS Materials related to the Software or Site and all copies thereof.
- 9.4 KISS shall not be liable under clause 9.3 in respect of any defect or fault caused by:
 - 9.4.1 any amendment of the Software by the Client or with its authority;
 - 9.4.2 any material or content supplied by the Client;
 - 9.4.3 any breach of contract by the Client; or
 - 9.4.4 any unauthorised, unlawful or malicious act by a third party.

KISS does not warrant that the Software or the Site will function uninterrupted or without downtime or error-free. No warranty is given relating to third-party software or materials, which, if supplied by KISS, are provided "as is".
- 9.5 To the extent that the Services include the posting of material on social media on the Client's behalf, the Client acknowledges that social media activity by its nature carries risk, and that in order to be an effective marketing tool the use of social media requires very prompt action and the Client will not necessarily be consulted prior to the posting being made.
- 9.6 Subject to clause 9.1:

- 9.6.1 KISS shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or revenue, loss or errors in or failure of e-commerce transactions, loss of reputation or any indirect or consequential loss;
- 9.6.2 KISS shall under no circumstances whatever be liable to the Client for the acts and omissions of third party suppliers, including suppliers of media space and programmatic and mobile marketing services, provided that KISS shall remain liable for its subcontractors.
- 9.6.3 KISS's total liability to the Client in respect of all losses arising under or in connection with the Ongoing Services, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the then current annual charge for the relevant Ongoing Service; and
- 9.6.4 KISS's total liability to the Client in respect of all losses arising under or in connection with the Contract (other than the Ongoing Services), whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid to KISS pursuant to the Proposal excluding any Ongoing Services.
- 9.7 In respect of website hosting services KISS will refund to the Client any service credits it receives from a third party provider to the extent attributable to the Client (as determined by KISS in its reasonable discretion), and if it does so the relevant sums will be set off from any liability KISS has.
- 9.8 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.9 Clauses 9.1, 9.6, 9.7 and 9.8 shall survive termination of the Contract.

10 TERMINATION

- 10.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 10.1.1 the other party commits a material breach 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;
 - 10.1.2 the other party enters into any compromise or arrangement with its creditors, a resolution is passed or an order is made for or in connection with the winding up or

bankruptcy of that other party (being a company), an administrator, receiver or administrative receiver is appointed in respect of the other party or its assets;

- 10.1.3 any event occurs with respect to the other party in any jurisdiction that has an effect equivalent or similar to any of the events mentioned in clause 10.1.2;
 - 10.1.4 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 10.2 Without limiting its other rights or remedies, KISS may terminate the Contract with immediate effect by giving written notice to the Client:
- 10.2.1 if the Client fails to pay any amount due under this Contract on the due date for payment; or
 - 10.2.2 as set out in clause 12.1.
- 10.3 By making an Order the Client commits to paying for all the Services contained in it. In the event that KISS acting in its sole discretion accepts termination of the Services (other than the ongoing Services) contained in the Proposal prior to completion the Client will pay the further sums mentioned in clause 11.1.2. The Client acknowledges that those sums represent a genuine estimate of KISS's loss arising from such termination.
- 10.4 Either party may terminate this Agreement in relation to any of the Ongoing Services by giving the other party not less than one month's notice, to expire no earlier than the anniversary of commencement of the relevant Ongoing Service.
- 10.5 Without limiting its other rights or remedies, KISS shall have the right to suspend provision of the Services under the Contract or any other contract between the Client and KISS if the Client becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.4, or if the Client fails to pay any amount due under this Contract on the due date for payment.

11 CONSEQUENCES OF TERMINATION

- 11.1 On termination of the Contract for any reason under clause 9:
- 11.1.1 the Client shall immediately pay to KISS all of KISS's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, KISS shall submit an invoice, which shall be payable by the Client immediately on receipt (and a due proportion may be invoiced in respect of any Services which have been partially performed);

- 11.1.2 in the event of termination under clause 9.3 the Client will, in addition to the sums referred to in clause 11.1.1, pay to KISS costs of preparing the Proposal and pitching for its appointment, including all out of pocket costs and internal costs charged at KISS's usual rates;
 - 11.1.3 the Client shall return (or, at KISS's option, delete or destroy) all the KISS Materials and Software except to the extent KISS has agreed in writing the title thereto has been transferred to the Client, and if the Client fails to do so, then KISS may enter the Client's premises and take possession of them;
 - 11.1.4 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 11.1.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect (but clause 6.5 shall be terminated).
- 11.2 If any of the Ongoing Services are terminated under clause 10.4, the Client shall return (or, at KISS's option, delete or destroy) all the KISS Materials and Software relating to that Service. The licence in respect of any Software which forms part of the relevant Ongoing Service will be terminated also.

12 GENERAL

- 12.1 KISS shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents KISS from providing any of the Services for more than 4 weeks, KISS shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.
- 12.2 KISS 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. The Client shall not, without the prior written consent of KISS, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.3 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by email (which, in the case of KISS, shall only be validly sent if sent to kissadmin@kisscom.co.uk). Any notice or

other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, on the next Business Day after transmission. This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall include e-mails.

- 12.4 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. 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. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 12.5 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.6 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.7 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing.
- 12.8 This Contract, and any dispute or claim 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Addendum: AI, Licensed Content, Security and Website Services

Effective Date: May 15, 2025

This Addendum supplements the KISS Companies: Terms and Conditions of Business (Terms) document between KISS Communications Ltd ('KISS') and the Client. This Addendum forms part of the Contract and applies to the use of AI tools, licensed stock imagery and video, font and password security, website hosting and SLAs, Cloudflare services, and related digital infrastructure.

1. AI Tool Use

1.1 KISS may provide services to the Client using proprietary or third-party tools powered by artificial intelligence ('AI Tools').

1.2 These AI Tools may include, without limitation: systems for content generation, proposal generation, case study development, and workshop facilitation, as well as such tools as may be developed and offered by KISS from time to time.

1.3 KISS may offer the Client access to certain AI Tools on a licensed basis, subject to a separate set-up fee and/or licence fee as set out in the Proposal.

1.4 The Client acknowledges that AI technologies and tools referenced in this Addendum are evolving technologies. Results produced by these tools may vary in quality, accuracy, and consistency.

2. Ownership and Licensing (AI)

2.1 All Intellectual Property Rights in or arising from the AI Tools, and any outputs generated by the AI Tools (excluding any Client Material), shall be governed by clauses 6.1 to 6.6 of the Terms.

2.2 Unless otherwise agreed in writing:

- the AI Tools remain the property of KISS at all times; and
- the Client is granted a non-exclusive, non-transferable licence to use the AI Tools and any outputs solely for internal business purposes and solely to the extent required for the proper receipt of the Services.

2.3 The Client shall not copy, adapt, reverse engineer, sublicense or otherwise exploit the AI Tools, except as expressly permitted by law or this Contract.

3. AI Service Delivery

3.1 KISS may use AI Tools to generate, analyse, or facilitate elements of the Services.

3.2 KISS shall determine, in its sole discretion, whether and to what extent outputs generated by AI Tools are reviewed or edited by personnel prior to delivery to the Client.

3.3 The Client accepts that certain elements of the Services may be delivered in whole or in part using automated methods.

3.4 Where outputs are delivered without human review, the Client remains solely responsible for their validation and use, and KISS disclaims all liability for such use.

4. Data Protection and Model Training (AI)

4.1 KISS shall not input Client Personal Data into any publicly available AI tool unless the Client has given prior written consent.

4.2 KISS may use client data in aggregated and anonymised form to improve its AI Tools and services, including:

- a) Combining data across multiple clients within the same sector to identify effective approaches and best practices;
- b) Learning from successful campaigns, content strategies, and performance metrics to enhance AI capabilities;
- c) Building sector-specific knowledge bases that improve service delivery for all clients.

All such use shall be conducted in compliance with applicable data protection laws and confidentiality obligations. No identifiable client-specific information will be disclosed to third parties without explicit consent.

4.3 KISS may develop proprietary AI models trained on Client-related data as part of its service delivery and ongoing business development. By engaging KISS's services, the Client acknowledges and agrees that:

- a) KISS may use Client-related data (in anonymized and aggregated form) to develop, train, and improve proprietary AI models;
- b) KISS retains exclusive ownership of all such AI models and related intellectual property, including when trained using Client-related data;
- c) KISS may commercialise and offer these AI models as products or services to other clients and third parties;
- d) No Client-identifying information will be exposed through such models unless the Client has provided separate explicit consent for such use.

4.4 Where AI outputs are delivered as part of licensed tool access or bespoke build, usage terms and outputs may be subject to separate licensing parameters set out in the Proposal.

5. Licensed Stock Imagery and Video

5.1 KISS may use licensed stock imagery and video ('Stock Content') in the course of delivering creative, digital, or marketing outputs to the Client. Stock Content may be sourced from iStock or other third-party libraries.

5.2 Two standard licensing models are offered. Clients will be advised of the applicable costs and asked to confirm their preferred option before purchase:

- KISS Standard License: KISS is the named licensee. Content may be used in final deliverables but not passed on as editable files. No rights are granted to re-edit, upload to tools like Canva, or redistribute. Lower cost.
- Client Standard License: The Client is the named licensee. KISS can provide editable assets and raw files, and the Client has full use rights within the bounds of the third-party licence. Higher cost.

5.3 The Client is responsible for complying with the terms of any Stock Content licence under which they are named. Full terms of iStock licensing are available at:

<https://www.istockphoto.com/legal/license-agreement>

5.4 Per image / video / credit rates are subject to supplier pricing at time of purchase and will be confirmed in the Proposal. Different libraries have different cost structures and licence conditions.

6. Font Licensing (including Adobe Fonts)

6.1 KISS may use commercial or subscription-based fonts (including but not limited to Adobe Fonts) in websites and digital deliverables.

6.2 Historically, font use has been covered under KISS's active subscription; however, following changes to Adobe licensing and usage terms, Clients are now required to hold their own valid software licence if using Adobe Fonts on their hosted website or editable deliverables.

6.3 KISS will notify Clients where font use implies a licensing dependency or risk. The Client accepts responsibility for ensuring any required licence remains active and valid for the lifetime of the digital asset or hosted platform.

6.4 Where licensing is not possible or is undesirable, KISS may recommend or implement font alternatives (open source or otherwise), which will be documented in the Proposal or Scope of Work.

6.5 KISS disclaims responsibility for compliance failures, litigation or take-down requests relating to unlicensed font usage where the Client fails to hold or maintain appropriate licensing.

7. Password Security

7.1 Where Clients are provided with access to systems, platforms, or tools managed or provisioned by KISS, the Client is responsible for maintaining secure access credentials.

7.2 The Client agrees to use passwords that are at least twelve (12) characters in length and include a combination of letters, numbers, and symbols to ensure adequate security.

7.3 KISS disclaims responsibility for any unauthorised access or data breaches resulting from weak or compromised Client passwords.

8. Platform Lifecycle and Software Maintenance

8.1 All platforms, content management systems (CMS), plugins, and third-party tools used in web development projects reach end-of-life (EOL) or require updating at some point.

8.2 KISS will notify Clients of impending EOL issues or required system upgrades. Any necessary updates, migrations, or platform changes will be carried out at the Client's cost, as agreed in writing.

8.3 Failure to act on upgrade recommendations may result in unsupported configurations, degraded functionality, or security risks. KISS disclaims liability for such risks where Client action is delayed or declined.

9. Website Support and Service Level Agreements (SLAs)

9.1 Clients hosting websites or platforms with KISS are required to have an active Service Level Agreement (SLA) in place. This SLA defines support response times, maintenance terms, uptime targets, and service scope. SLAs are subject to separate fees, which are based on the level of support required.

9.2 SLA coverage includes core CMS management, plugin/module maintenance, emergency fixes, and access to proactive reporting and monitoring tools, including SEMrush site audit integration where applicable.

9.3 Response times and target resolutions are tiered according to issue severity and are published in the SLA documentation, which also forms part of the Proposal issued to the Client. All applicable SLA fees and inclusions are clearly itemised within this document.

9.4 KISS will use reasonable efforts to meet target resolution times. However, timelines may vary based on third-party service dependencies, hosting infrastructure, or Client availability.

10. Cloudflare Security Integration

10.1 KISS offers optional website security and performance enhancements via Cloudflare, including but not limited to DDoS protection, web application firewall (WAF), CDN optimisation, and bot mitigation.

10.2 This service is available to Clients who host their websites with KISS and wish to enable Cloudflare through KISS's agency partnership.

10.3 Cloudflare integration is subject to additional charges, which will be confirmed in the relevant Proposal or Scope of Work.

10.4 Where Cloudflare is activated:

- The Client agrees to be bound by the applicable Cloudflare terms of service: <https://www.cloudflare.com/terms/>
- KISS will act as an implementation partner but is not responsible for outages, data loss, performance changes, or legal claims arising from Cloudflare's infrastructure or configuration.

10.5 KISS will support the implementation and monitor integration within its scope of access but shall not be liable for direct or indirect issues originating from Cloudflare systems or changes in Cloudflare policies.

11. Acceptance and Implementation

11.1 This Addendum shall take effect immediately upon acceptance by the Client, which may be evidenced by continued use of the Services following notification of these terms.

11.2 KISS may update this Addendum from time to time by providing notice to the Client.

11.3 For any questions regarding this Addendum, please contact your Project Manager or email info@kisscom.co.uk.

12. Relationship to Main Terms and Conditions

12.1 This Addendum is supplementary to and should be read in conjunction with the KISS Companies: Terms and Conditions of Business.

12.2 All definitions, interpretation rules, governing law provisions, and other general provisions contained in the main Terms and Conditions document apply equally to this Addendum unless specifically modified herein.

12.3 For matters specifically addressed in this Addendum (including AI tools, licensed stock imagery, font licensing, password security, platform lifecycle, website support, and Cloudflare services), the provisions in this Addendum shall take precedence over any conflicting provisions in the main Terms and Conditions. For all other matters, the main Terms and Conditions shall continue to apply.

12.4 The provisions of this Addendum are designed to address evolving technologies, services, and legal requirements that may not have been fully contemplated in the original Terms and Conditions.