

## **FIZZDOT TERMS AND CONDITIONS**

### **INTRODUCTION**

- 1 Our business is continually evolving and as such we reserve the right to change our Terms and Conditions when necessary. It is your responsibility to ensure that you are up to date with all of our Terms and Conditions and you should check this website from time to time to review the current Terms and Conditions. Certain provisions of our Terms and Conditions may be superseded by expressly designated legal notices or terms located on particular pages at this Website.
- 2 Revisions of these Terms and Conditions shall take effect immediately after publication on the Fizzdot website.
- 3 Your signature on a printed copy of this agreement is not required in order for the agreement to be legally binding on you. Your use of the services shall constitute a virtual signature, having the same force and effect as if you had actually signed a printed copy of this agreement.

### **DEFINITIONS**

- 4 "us, our, we": E-CRM Solutions Limited, t/a Fizzdot, a company registered in England and Wales, company registration number: 3883699. Registered office: Bank House, Southwick Square, Southwick, West Sussex, BN42 4FN who are the services supplier.
- 5 "you, your": the client (including any employees, subcontractors or agents working on your behalf) being the purchaser of the services, who enters into this agreement with us.
- 6 "the services": the consultancy, marketing, internet, search engine and software services and work as agreed to verbally or in writing between you and us from time to time and that we have agreed to perform at your reasonable direction.

### **APPOINTMENT AND TERMINATION**

- 7 You agree to appoint us as your sole supplier to perform the services, for a minimum initial term of twelve (12) months continuing thereafter unless or until ended by either party giving to the other not less than six (6) months' notice in writing.
- 8 You undertake not to use any other supplier or to perform the services internally.
- 9 Either party may give written notice to terminate this agreement if the other:
  - 9.1 fails to pay any amount due hereunder
  - 9.2 commits a material breach of this agreement which is not remedied within 14 days of being required to do so in writing
  - 9.3 has an administration order made or a resolution passed for its winding up or has a provisional liquidator appointed, goes into liquidation or has a receiver or administrator appointed or is unable to pay any of its debts within the meaning of Section 123 of the Insolvency Act 1986, or if any voluntary arrangement is proposed under Section 1 of the Insolvency Act 1986
- 10 Upon termination of the services:
  - 10.1 you will be responsible for entering into appropriate licences with Third Party Copyright owners and meeting the costs thereof
  - 10.2 you will be liable for the any charges as either originally or amended in writing estimated or quoted by us and other related expenses incurred and pay us for all the services performed up to the date of termination by us and we shall provide to you any materials for which you have so paid
  - 10.3 each party shall return to the other all materials and property including proprietary data which has been provided to it for the purposes of this agreement and / or the services

### **RESPONSIBILITIES AND OBLIGATIONS**

- 11 Subject also to the terms listed in the remainder of this agreement you:
- 11.1 understand and agree that it is your exclusive responsibility to ensure that the parameters of a the services are fully reflected in the specification or modifications and the consequences of any failure so to do, financial or otherwise, will be for your sole account
  - 11.2 shall appoint staff acceptable to us, which acceptance shall not be unreasonably withheld, and undertake to channel all contact with us during this agreement through these staff
  - 11.3 will not hinder us and provide full co-operation
  - 11.4 will make available as soon as is reasonably possible to us all materials required to complete the services to the agreed standard and within agreed timescales
  - 11.5 will provide to us in a timely manner all assistance and information and materials which we may reasonably request for the performance of the services, and understand and agree that we will not be liable for delays in performance caused by any delay or failure to provide same to us
  - 11.6 will co-operate with us and comply with any agreed procedures and not to withhold or delay approvals unreasonably
  - 11.7 will make available to us such office and secretarial services as may be necessary for the services
  - 11.8 will provide and be responsible for any data or information relating to your own products and services and for services necessary for the provision of the services
  - 11.9 will not modify requirements once they have been agreed and the services have commenced
  - 11.10 understand and agree that, if you do wish to modify or add to requirements, such modifications or additions may change the price of the services
  - 11.11 understand and agree that we will not be responsible for any delays to the services caused by such modifications or by any circumstances that are not within our reasonable control
  - 11.12 understand and agree that any modifications or additions to the services will be carried out at our discretion
  - 11.13 understand and agree that we accept no responsibility to ensure such modifications or additions are error free and reserve the right to charge an according amount for any correction to these or further modifications or additions
  - 11.14 understand and agree that we will not be liable for costs incurred, compensation or loss of earnings due to the failure to meet agreed deadlines
  - 11.15 understand and agree that we supply the services for contracted time not for a specific task
  - 11.16 understand and agree that your approval of copy, layouts, creative and artwork whether physical or electronic will be sufficient authority for us to purchase the agreed production materials and prepare proofs, and your approval of proofs will be sufficient authority for us to publish such materials
  - 11.17 understand and agree that your approval of television, cinema and radio scripts and / or storybooks, website layouts and advertising copy will be sufficient authority for us to enter into production contracts [and engage performers] and your approval of films and recordings will be sufficient authority for us to transmit
  - 11.18 understand and agree that your approval of schedules and estimates will be sufficient authority for us to make necessary reservations and contracts for space, time and other facilities

- 11.19 agree to exercise due diligence in your directions to us regarding preparation of materials and must be able to substantiate all claims and representations. You are responsible for all trademarks, service mark, copyright and patent infringement clearances. You are also responsible for arranging, prior to publication, any necessary legal clearance of materials we prepare
- 11.20 understand and agree that you must make sure that any critical functionality you require from any software is included prior to confirming an order and that you take responsibility for the suitability, accuracy, utility or function of any software used in the services. You understand and agree that all licenses and warranties are as provided by the software originators
- 11.21 understand and agree that your verbal instructions, signed order form, order acknowledgement or purchase order or email are sufficient for us to proceed with any activity on your account including the purchase of media the purchase and installation of software and that you are liable for any price of media, software and support agreements
- 11.22 understand and agree that you will be assumed to have read, understood, approved and agreed all software licensing terms and conditions if we purchase or install software on your behalf. If we have to agree to an end user license agreement on installing software on your behalf then you have fully accepted any such end user license agreement
- 11.23 understand and agree that you will provide or seek any information, additional software, support or co-operation pertaining to the server required in order for the application(s) to be correctly developed / deployed
- 11.24 understand and agree that you are responsible for testing fully any application or programming relating to a site developed by us before it is available for use. If you discover any errors after a site goes live, we will endeavour, but are not obliged, to correct these issues to meet the standards of function outlined in the brief
- 11.25 understand and agree that you shall be deemed to have accepted a website unless within 14 days of the date of such notification, you notify us to the contrary in writing and specify in such notice the grounds for not accepting the website. You shall not refuse to accept the website unless it substantially fails to conform to the functionality requirements detailed
- 11.26 understand and agree that you shall be deemed to have accepted a website if the website is made live and accessible by your customers or end-users
- 11.27 accept that you bear sole responsibility for the content of all material on your website whether posted on the website by you, or on your behalf by another person (whether us or a third party)
- 11.28 confirm that the specific representation of your marketing and advertising whether as web pages or other services are not:
- 11.28.1 pornographic, sexist, extremist or glorifications of violence
- 11.28.2 in violation of good taste nor national or international law
- 11.28.3 in violation of trademark, patent or other third party rights and
- 11.28.4 that if they are we may terminate any campaign and that you will immediately pay any and all fees due under this agreement
- 11.29 you understand and agree that the minimum term of engagement for search engine optimization (SEO) shall be twelve (12) months. In the event of delay for which we are not responsible, you will extend the term to cover the delay(s) and you:
- 11.29.1 understand and agree that the SEO process will take at least 3 months to show some effect and achieving stable rankings can take up to 12 months and require major investment and that your site may drop in rankings and get less traffic from search engines
- 11.29.2 understand and agree that you must inform your webmaster(s) or anyone else who has access to your web site that we are performing SEO services for the site

- 11.29.3 understand and agree that when we are performing SEO services it is your responsibility to ensure that your website is hosted on a reliable server, based in the UK (or the country of search engine interest), with constant availability and is not hosted on free web space nor using domain forwarding (either framed or otherwise) and is not part of a 'bad neighbourhood'
- 11.29.4 understand and agree that any SEO activities undertaken by you or by any party other than us or that is similar to or that involves the use of or inclusion of any product or service which might relate to what we are doing to optimize your web site might interfere with and affect the results, outcomes and positions in search engines and that if you undertake or cause to be undertaken such activities then we may terminate any campaign and you will pay all fees due under this agreement
- 11.29.5 understand and agree that we give no guarantees for SEO services as to your site position in the search engines as the search engines change their ranking algorithms on a regular basis and both new and competitor sites optimised and submitted which may increase or decrease your web site's ranking position. If rankings drop, you understand and agree that further services may be required to restore previous rankings (if possible) and may be chargeable
- 11.29.6 grant authority to us at our discretion, for all SEO services, to gain FTP access to your website, add additional directories, pages and content, change link structures and menus, modify page structure and change code and use all legal, decent, honest and truthful strategies to optimise the structure and content of your site directories and web pages and produce documents that contain words or phrases to achieve the highest possible ranking within search engine results and submit the web site pages being promoted to search engines and directories
- 11.29.7 understand and agree that you are responsible for ensuring that your web site is always active and accessible to us for SEO services and that whilst reasonable endeavours will be used so that where possible changes will not affect the design and layout of your site this cannot be guaranteed
- 11.29.8 understand and agree that if your pages are light in text content (less than approximately 300 visible words per page), you agree to provide additional relevant content for the purpose of enhancing SEO ranking
- 11.29.9 understand and agree that you are responsible for the payment of registration fees that might be required by any search engines or directories included in any SEO campaign
- 11.29.10 understand and agree that we may terminate any SEO campaign and that you will pay all fees due under this agreement should you participate in actions considered undesirable (spamming) by the search engines. This includes but is not limited to hidden links, links to link-farms, FFA link pages, redirect or cloaking techniques, submitting the web pages of the site to the search engines, search directories or other websites without our consent, use of automated web site submission software or automated reciprocal link programs
- 11.30 represent and warrant that you have the right and authority to enter into this agreement for search engine advertising (SEA) and to provide the search listing advertisement and permit the access to and use of the relevant website in the manner anticipated by this agreement and agree to pay an agreed set up and monthly management fee for SEA and for us to manage your campaign for a minimum period of twelve (12) months.
- 11.30.1 understand and agree that payment for the implementation of your SEA campaign set up & optimisation will be in advance of the campaign being activated and after you have agreed to your proposal and account set up structure
- 11.30.2 understand that we do not receive any commissions from any search engine
- 11.30.3 authorise us to bid on your behalf up to an amount you have specified by completing any forms required by us for that purpose or supplying us the information required which must be by email, not verbally, to indicate which search term you wish to bid for and how much you are prepared to pay for a click-through from a search listing advertisement to the relevant website.

We will bid on the basis of and be subject to the rules of our supplier from time to time. The inclusion of your search listing advertisement within the services is subject to our sole discretion and we and our suppliers reserve the right to refuse to register on your behalf any word or phrase proposed by you, including, inter alia, where such word or phrase is not relevant to the content of your site

- 11.30.4 understand and agree that you must pick at least ten search terms before we can provide SEA services to you
- 11.30.5 understand and agree that bids we make on your behalf for a particular search term for your SEA advertisement may include misspellings, singular/plural combinations, and other related search terms that we map to your search listing advertisements based on the search terms you selected after consultation with us, your search listing advertisement itself or the web sites to which it links. We reserve the right to remove any keyword or phrase in our absolute and sole discretion without liability to you
- 11.30.6 understand and agree that we may provide suggestions to you for search terms, title and/or descriptions or for any other element of a SEA advertisement but the final decision to authorise any suggestion is yours. Ideas provided by us are only suggestions. It is your responsibility to determine whether such suggested terms comply with all the requirements in this agreement. In particular, by using a search term, search title, search description and/or search listing advertisement that may have been suggested by us, you expressly acknowledge that such search term, search title, search description and/or search listing advertisement is in compliance with the provisions in 10.30.12
- 11.30.7 understand and agree that a SEA advertisement may include text and/or graphic elements as well as search titles and descriptions which you will provide. The content of any such search listing advertisements is subject to our and our supplier's approval and the terms of this agreement
- 11.30.8 understand and agree that if you change your URL you must notify us by email immediately and we will seek to make changes necessary which will take at least 10 working days before such changes become effective. You must contact us if any of your listed URLs result in error pages or dead links at any time. This may arise where you undergo a site redesign, down time, technical problems for other reasons. All click throughs during that period will continue to be charged to your account. We reserve the right to suspend your account where it is with a dead link
- 11.30.9 acknowledge and agree that neither we nor our suppliers are responsible for the maintenance of your website nor responsible for any order entry, payment processing, shipping, cancellations, returns or customer service concerning orders placed on any such website and that SEA advertisements and any information on the website shall at all times be maintained to be current or accurate
- 11.30.10 hereby grant us and/or our suppliers a right and license to access, spider, crawl and manually extract and use information from your web site(s) for the purpose of assessing content and relevance to any particular search term or to the SEA advertisements and to use and make such material available to third parties for the purpose of your inclusion in the services
- 11.30.11 understand and agree that certain sites such as personal or pornographic sites will not be accepted by us or our suppliers and we shall notify you of this. If you change the nature of what is sold or marketed on your site you must notify us by email immediately and we reserve the right in such a case or at our discretion for any other reason to exclude your site and terminate this agreement by written notice forthwith
- 11.30.12 represent and warrant that the information and content in the search listing advertisement and any website it links to does not:
  - 11.30.12.1 violate any law statute, statutory instrument or regulation
  - 11.30.12.2 infringe the British Codes of Advertising and Sales Promotion or any other codes of advertising standards laid down on a statutory or a self regulatory basis for the regulation of the United Kingdom advertising industry

- 11.30.12.3 infringe in any manner any copyright, patent, trademark, trade secret or any other intellectual property or proprietary rights of any third party
- 11.30.12.4 breach any duty toward or rights of any person or entity or any consumer protection legislation
- 11.30.12.5 contain any content, products or services that have resulted in any claims relating to product liability, tort, breach of contract, injury, damage or harm of any kind to any person or entity
- 11.30.12.6 involve your impersonating any person or entity or falsely stating or otherwise misrepresenting your affiliation with a person or entity
- 11.30.12.7 contain any false, misleading, defamatory, libellous, threatening, harassing, vulgar, harmful or ethnically or racially abusive material or any obscene or blasphemous material or any other material that is unlawful in the UK
- 11.30.12.8 seek to collect any personal data unless such personal data is collected, stored, processed and dealt with in accordance with the Data Protection Act 1998
- 11.30.13 represent and warrant that if the content of the search listing advertisement or linking website is an investment advertisement within the meaning of the Financial Services and Markets Act 2000 that the search listing advertisement and any websites to which it links comply with the act and you are or will be authorised to carry out such activities
- 11.30.14 understand and agree that whether we create you a new SEA account or have dual access to your current SEA account neither party can change the login details throughout the duration of the contract unless agreed in writing (e-mail, fax and post) by both parties
- 11.30.15 understand and agree that any tools, coding, new keywords and any knowledge gained cannot be used in any other SEA account you may have, or create yourselves
- 11.30.16 understand and agree that we can monitor your SEA account after cancellation or expiry of this agreement to make sure you are not using any tools, coding, new keywords and any knowledge gained for the financial benefit of another third party. If another party takes over your account management we reserve the right to remove any unique techniques implemented in our account structure at the set up stage
- 11.31 understand and agree that if you purchase hosting services via us to abide by the terms of the agreement we have with our suppliers a copy of which will be made available on request
- 11.32 represent and warrant that with regard to any email product or service provided you will:
  - 11.32.1 not use it for the sending of unsolicited email (sometimes called "spam")
  - 11.32.2 only use it for lawful purposes
  - 11.32.3 not access or otherwise use third parties mailing lists
  - 11.32.4 agree to import, access or otherwise use only lists for which all listed parties have consented to receive correspondence from you
  - 11.32.5 never share, sell, or rent individual personal information with anyone for their promotional use without any subscriber's advance permission or unless ordered by a court of law
  - 11.32.6 respect recipients' time and attention by controlling the frequency of mailings
  - 11.32.7 understand and agree that not all messages sent through use of the email product or service will be received by their intended recipients
  - 11.32.8 ensure that all emails sent by you contain a working unsubscribe link that allows the recipient to remove themselves from your mailing list
  - 11.32.9 monitor and process unsubscribe requests received by you directly within 10 days of submission, and update the email addresses to which messages are sent

- 11.33 undertake to keep secure from third parties any passwords issued to you by us in connection with any services or hosting
- 11.34 undertake fully to virus-check all data supplied to us
- 11.35 understand and agree that any timescales or target dates are not binding and are for guidance purposes only
- 11.36 understand and agree that during the term of the services and for a period of two (2) years thereafter, you shall not, without our prior written consent offer employment to or enter into any contract for services with any of our employees or subcontractors (or individuals employed or sub-contracted to such companies) who have provided the services. If this clause is breached then you agree to pay us a fee equivalent to twice the particular individual's gross annual remuneration package (ex VAT) which will be payable immediately upon the breach
- 11.37 undertake to pay all taxes, fees, levies and duties whether for import or otherwise arising in any part of the world in connection with the services. If both parties agree, we may pay any such sums, and you undertake to reimburse such sums to us immediately on demand
- 11.38 undertake that if we provide the services for a customer of yours, you:
- 11.38.1 will make no guarantees, warranties or representations in excess of those contained herein in relation to the services
- 11.38.2 will indemnify us against any claims relating to any guarantees, warranties or representations so made by you
- 11.38.3 will procure that your customer performs such obligations hereunder as relevant to enable the services to be completed
- 11.38.4 will ensure that your customer understands and agrees to these terms and conditions
- 11.38.5 understand and agree that we will not be liable or become involved in any disputes between you and your clients or customers
- 11.39 understand and agree that we may immediately disable your access to the services without refund if we believe in our sole discretion that you have violated any of the policies listed above or elsewhere in this agreement
- 11.40 will not, directly or indirectly:
- 11.40.1 reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the services or any software, documentation, or data related to the services
- 11.40.2 remove any proprietary notices or labels from the services or any software, modify, translate, or create derivative works based on the services or any software
- 11.40.3 copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the services or any software
- 11.41 understand and agree that in the event of cancellation by you, goods, services and licences already contracted for by us in relation hereto must be paid for by you
- 11.42 understand and agree that your rights and obligations under this agreement are personal to you and may not be assigned, transferred, charged, licensed, sub-contracted or otherwise delegated, transferred or disposed of in whole or in part. However, in the event that you wish to assign your rights because of change of ownership or business development, you may assign your rights hereunder to a third party with our prior agreement, such agreement not to be unreasonably withheld
- 12 We will:

- 12.1 exercise reasonable care and skill in providing the services. All other warranties or conditions whether express or implied, relating to quality of the services are excluded
- 12.2 use reasonable endeavours to complete the services within the timescales set
- 12.3 attempt to promptly advise you of any potential or actual delays
- 12.4 attempt to inform you as soon as reasonably possible about any circumstances that are likely to prevent us from completing the services within the timescales set out
- 12.5 comply with relevant safety and other legislation or regulatory requirements that apply to the services
- 12.6 use reasonable endeavours to respond to any request for support in relation to a recognised emergency or fault
- 12.7 use reasonable endeavours to ensure that a website and any scripts or programs are free of errors and when it has in our opinion of been completed, we will notify you in writing and provide you with an opportunity to test the website
- 12.8 use reasonable endeavours to ensure that software products are problem free
- 12.9 use reasonable endeavours to ensure that any developed / designed site or application will function correctly on the server on which it is installed and that it will function correctly when viewed with the most popular version of the web browsing software Microsoft Internet Explorer and to an acceptable level with Mozilla browsers. We can offer no guarantees of correct function with all browser software
- 12.10 include facilities to allow you to determine the number of people who open your emails. When a subscriber clicks on a link in an email, we may record this individual response to allow you to customize your offerings. These facilities collect only limited information.
- 12.11 use reasonable endeavours whilst reselling or recommending hosting companies to ensure that they are of sound reputation but make no guarantees as to availability or interruption
- 12.12 agree that during and after termination of this agreement, all the financial details supplied to us by you for the purpose of our services will be kept confidential
- 12.13 take all reasonable steps to comply in the event that you request in writing any cancellation or amendment to services in progress if we can do so within our contractual obligations with media and suppliers. If this is not possible, you agree that you will reimburse us for:
  - 12.13.1 any charges or expenses to which we are committed
  - 12.13.2 services in progress
- 12.14 be entitled to subcontract any or all of the services to suitably qualified personnel or organisations. In this event, our rights and obligations hereunder shall not be diminished
- 13 We retain the right at all times after reasonable consultation with you to refuse to post any material and to suspend the availability of a website and place a prominent notice on the website where an allegation of defamation or Intellectual Property Right infringement is made by a third party or place a link on a website to another website containing the alleged version of events and / or to remove any material already appearing on a website which, in our opinion may under the laws of any jurisdiction from which it is possible to access the relevant website:
  - 13.1 be illegal, illicit, indecent, obscene, defamatory, infringing of third party rights (of whatever nature and including, without limitation, any Intellectual Property Rights)
  - 13.2 be in breach of any applicable regulations, standards or codes of practice (notwithstanding that compliance may not be compulsory)
  - 13.3 harm our reputation in any way

- 14 Our rights to suspend a website and / or remove content under shall be without prejudice to your sole responsibility for content of a website and to the warranties given by you relating to that content. Posting of material by us on a website shall not under any circumstances constitute a waiver of any of our rights in relation to such material or of any breach of your obligations.

## **INTELLECTUAL PROPERTY**

- 15 All copyright and intellectual property rights in all services written, provided or produced by us for the services does vest or shall vest solely in us immediately and unconditionally upon being developed, produced or written and remains our copyright and may only be commercially reproduced or resold with our permission unless the rights have been assigned by us to you.
- 16 If you request and on payment of an agreed sum and provided that all obligations arising from this agreement (including those relating to payment and the period of notice) have been met, we may agree to assign such copyright and other intellectual property rights as we do hold to you on termination of this agreement.
- 17 For avoidance of doubt, we shall retain the copyright and other intellectual property rights in any material contained in any presentation or submission prepared by us for you.
- 18 The copyright and other intellectual property rights in all software programs used to process data and lists shall remain our exclusive property.
- 19 You acknowledge and agree that any identifiable and original idea or concept presented by us in relation to any promotion or campaign invented or developed by us shall be available only for such a promotion or campaign and shall not be used for any other purposes whatsoever without our express prior agreement given in writing.
- 20 The copyright and other intellectual property rights in creative services commissioned by us from third parties will normally vest in the supplier. We will use reasonable endeavours to ensure appropriate usage rights in respect of this material. If required, and at your expense, we shall use reasonable endeavours to obtain extended rights or assignment of copyright and other intellectual property rights.
- 21 You take responsibility for any copyright infringements caused by materials submitted by you to us. We reserve the right to refuse any material of a copyrighted nature unless you give adequate proof of permission to use such material.
- 22 You agree to indemnify us against all damages, liabilities, costs and expenses which we may incur or sustain including the costs of defending any suit arising from the use of any materials or data provided by or on your behalf or any act or omission by you, your employees or agents.
- 23 You grant licences and consents to us without charge to use your Intellectual Property Rights to the extent necessary for the purpose of this agreement.

## **PROTECTION AND CONFIDENTIALITY**

- 24 Even where no services are agreed, the ideas and concepts presented to you shall remain strictly confidential and you shall not use them in any way, including communication to any third party, without our express prior consent.
- 25 We acknowledge a duty not to disclose without your permission during or after the term of appointment, any confidential information resulting from studies or surveys commissioned and paid for by you. You, in turn, acknowledge our right to use as we see fit any general marketing or advertising intelligence in the field of your product or service, which we have gained in the course of our appointment.
- 26 During the period of this agreement and at all times thereafter, each party shall treat as confidential and not reproduce or disclose to any other party all information, including but not limited to:

- 26.1 software programs whether in source or object code format
- 26.2 technical data
- 26.3 correspondence
- 26.4 the details of this agreement or the services or estimates and
- 26.5 other material which is stated to be the confidential and / or trade secret information of the other party or which may be reasonably presumed to be so
- 27 Each party shall safeguard such information to the same extent that it safeguards its own confidential and proprietary information and in any event with not less than a reasonable degree of protection.
- 28 Notwithstanding the foregoing, we shall be entitled to provide to third parties such information as is necessary for it to perform their obligations in relation to the services, or as may be required by law.
- 29 The obligation of the parties not to disclose information shall not apply to:
  - 29.1 information which was already in the public domain or
  - 29.2 in the rightful possession of the other party, at the time of its disclosure or
  - 29.3 which is disclosed as a matter of right by a third party or
  - 29.4 which passes into the public domain by acts other than the unauthorised acts of the other party
- 30 Both parties agree that in the event of a breach of confidentiality, money or damages may not be an adequate remedy, and therefore, in addition to any other legal or equitable remedies, either party shall be entitled to seek injunctive relief to prevent an anticipated breach of confidentiality.
- 31 Within ten (10) days of the completion of the services, each party shall return all originals and any copies thereof of any confidential information of the other party

#### **TERMS OF BUSINESS WITH MEDIA AND SUPPLIERS**

- 32 For the avoidance of doubt, we regard print, face to face staffing and consumables, domain names, website hosting and pay per click advertising as media.
- 33 The levy of 0.1% payable by advertisers through agencies to the Advertising Standards Board of Finance applies to all gross media rates on press display, advertisements (excluding classified lineage and semi-display), on outdoor, cinema and direct mail appearing in the UK and is not subject to commission.
- 34 If we purchase media on your behalf, unless otherwise stated, we make contracts with the media and suppliers in accordance with media rate card or other standard conditions or at such prices or conditions as may be negotiated separately.
- 35 Your rights and liabilities shall correspond to those between us and the various media and other suppliers under such standard conditions.
- 36 If you purchase media then you are responsible for ensuring that it is fit for purpose and meets any technical specifications demanded by any software, programs or processes.

#### **ADVERTISING STANDARDS**

- 37 We use reasonable endeavours to comply with the British Codes of Advertising and Sales Promotion, administered by the ASA, and with the DMA (UK) Direct Marketing Codes of Practice and other codes of advertising standards laid down on a self-regulatory basis.

- 38 You will provide a list warranty confirming that any data supplied to us for use in your marketing campaigns has been appropriately obtained and registered under the Data Protection Act 1998 and when relevant properly cleaned under the Mail, Telephone and / or Fax preference services.

#### **CHARGES**

- 39 We charge based on the following:
- 39.1 time, services and materials including but not limited to:
    - 39.1.1 the time spent on the matter
    - 39.1.2 the importance and value of the matter to you
    - 39.1.3 the complexity of the matter or the difficulty or novelty of the issues raised
    - 39.1.4 the skill, labour, specialist knowledge and responsibility involved
    - 39.1.5 considering facts relevant to your strategy and campaigns
    - 39.1.6 reading and considering relevant information and the number and importance of the documents prepared or perused
    - 39.1.7 creative and development services
    - 39.1.8 the place where and the circumstances in which the matter or any part of it is transacted
    - 39.1.9 personal and telephone attendances on you and on your behalf
    - 39.1.10 correspondence with you
    - 39.1.11 attendances upon, dealing with and instructing third parties
    - 39.1.12 time spent travelling
  - 39.2 Postage, other transportation charges, telecommunications charges and copying costs especially incurred in carrying out your instructions and safeguarding your interests charged at net cost.
  - 39.3 Travel, subsistence and hotel expenses of our employees or sub-contractors especially incurred in carrying out your instructions and safeguarding your interests charged at net cost.
  - 39.4 All goods and services, purchased by us on your behalf will be subject to a minimum mark up of 17.65%.
- 40 Services on weekends or bank / public holidays will be charged at double time

#### **TERMS OF PAYMENT**

- 41 We will not publish in media nor assign intellectual property until cleared funds are available to us. For the avoidance of doubt, we regard print, face to face staffing and consumables, domain names, website hosting and pay per click advertising as media.
- 42 When you commission services other than media, a deposit of 30% of the estimate is required from you. We will then bill you for ongoing costs. You are obliged to pay any outstanding balance in full once the services are completed.
- 43 You must pay outstanding accounts for services carried out by us or on our behalf in full no later than 7 days from the date of the invoice. We may contact you via email and telephone to remind

you of such payments if they are not received when due.

- 44 Until payment is received for all outstanding bills and for unbilled services in progress, we may exercise a lien or charge over certain property belonging to you which has come into our possession in the course of our engagement and access to online media may be denied and / or online media removed.
- 45 We reserve the right to terminate or suspend the services if you are overdue with payments at any time.
- 46 For the purposes of this agreement time of payment shall be of the essence.
- 47 If you attempt to pay by means of a cheque which is not honoured by your bank for any reason whatsoever, you will be liable for an administration charge of £25, and we may suspend the services at our discretion. The same fee's also apply if you wrongly request a chargeback if paying by credit card.
- 48 If at any time you fail to meet the standard of creditworthiness deemed acceptable by us from time to time, we shall be entitled to do all or any of the following:
  - 48.1 require you to make such regular instalment payments in advance on account of any future charges as we deem necessary.
  - 48.2 impose credit limits on you in respect of Charges, and to suspend the Service at any time when such limits are reached until payment in full of such outstanding charges.
  - 48.3 impose such other restrictions on your right to use the services as we shall reasonably deem necessary.
- 49 We may enforce charges under The Late Payment of Commercial Debt Regulations 2002. Following consistent non-payment of an invoice our solicitors may contact you with a view to taking the matter further and if need be to seek payment through legal procedures and if necessary court summons.

## **LEGAL LIABILITY AND OTHER CLAIMS**

### **LIMITATION OF LIABILITY**

- 50 We shall provide the services in a professional manner with due care, skill and competence at a level commensurate with industry standards. No warranty or guarantee is given that the services will be successful in whole or in part. We shall not be liable for any indirect, consequential, special or incidental loss or damage suffered by you or any third party, including loss of property, of data or of profits even if we have been advised of the possibility of such damage arising directly or indirectly from the provision of the services. Our liability to you or any third party, for a claim of any kind arising as a result of or related to any product or service, whether in contract, in tort (including negligence or strict liability) or otherwise, under any warranty, condition or guarantee or otherwise, shall be limited to monetary damages and the aggregate amount thereof for all claims relating to any particular service or product provided shall in any event be limited to a sum equivalent to the aggregate amount paid to us under the relevant service or for the relevant product which gave rise to the claim. You will indemnify us against any claim that exceeds this figure. This limit will not apply in the case of death or personal injury caused by our negligence. You may bring no action, regardless of form, more than one (1) year after the events that gave rise to the cause of the action.
- 51 We shall not be liable to you for any delay in, or omission of, publication or transmission or any error in any advertisement, nor delay in posting or delivery, in the absence of default or neglect on our part.
- 52 We shall have no liability to you with regard to the results or otherwise of the services provided and we in no way guarantee that the services will benefit you in any way.
- 53 Notwithstanding anything contained in the agreement, we will not be liable for any increased costs, loss of profits, consequential, economic, or indirect loss arising in any way in connection with the performance (or non performance) of the obligations related to this agreement.

## **YOUR INDEMNITY TO US**

- 54 You will indemnify us against any loss incurred as the result of any civil claims or proceedings brought against us based upon any advertising and other services prepared for you by us and approved by you before publication.
- 55 You agree that you shall be liable for, and hereby agree to indemnify us on demand in respect of any and all demands, liabilities, losses, costs and claims (including reasonable legal fees) sustained or incurred by us, our agents, suppliers, resellers, our customers, officers or employees, and arising as a result of breach by you, your employees, agents or sub-contractors, or any person with whom you share the services.

## **GENERAL PROVISIONS**

- 56 Neither party shall be liable for any loss suffered by the other or be deemed to be in default for any delays or failures in performance hereunder resulting from acts or causes beyond its reasonable control, or from any acts of God, acts or regulations of any governmental or supra-national authority, war or national emergency, accident, fire, riots, strikes, lock-outs, labour troubles, illness, labour or transportation difficulties, inability to obtain export or import licences, failure or fluctuation of electric power, air conditioning or humidity control and such party shall be entitled (subject to giving the other party full particulars of the circumstances in question and to using its best endeavours to resume full performance without avoidable delay) to a reasonable extension of time for the performance of such obligations.
- 57 We reserve the right to refuse to handle in any way, material which may be deemed offensive, illegal or in any way controversial
- 58 Our employees or agents are not authorised to make any representation concerning the services unless confirmed by us in writing, and you cannot rely on any representations which are not so confirmed.
- 59 No variation in these terms shall be valid against us unless made in writing and signed by an authorised signatory.
- 60 Any notices or other communication required to be given under this agreement shall be given in writing and sent by recorded delivery mail or facsimile transmission confirmed by hard copy letter to the address of the relevant party as given in the quotation and shall be deemed received forty-eight (48) hours after dispatch.
- 61 The waiver or failure of either party to exercise in any respect any right or remedy pursuant to this agreement shall not be deemed a waiver of any further rights or remedies.
- 62 The relationship between you and us is that of independent contractors and nothing in this agreement shall be construed to:
- 62.1 give either party the power to direct or control the activities of the other party
- 62.2 constitute the parties as employer and employee, principal and agent, partners, joint venturers, co-owners or otherwise participants in any joint undertaking
- 62.3 allow either party to create or assume any obligations on behalf of the other party for any purpose
- 63 In the event of any conflict between the provisions of this agreement and any purchase order or other document issued by you the provisions of this agreement shall prevail.
- 64 The parties shall attempt to resolve any dispute (other than for payments due to us) arising out of or relating to this agreement through negotiations between senior executives of the parties, who have authority to settle the same. If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators. If the matter has not

been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. The seat of the arbitration shall be England and Wales. The arbitration shall be governed by both the Arbitration Act 1996 and Rules as agreed between the parties. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary. Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.

- 65 The headings of this agreement shall not affect its interpretation.
- 66 The agreement represents the complete and exclusive statement of the agreements concerning between the parties and supersedes and replaces all prior communications, drafts, contracts, representations, warranties, undertakings and agreements of whatever nature whether oral or written, between the parties.
- 67 If any court or administrative body of competent jurisdiction shall find any provision of this agreement to be invalid or unenforceable it shall be considered severable and the invalidity or unenforceability of such provision shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

#### **LAW**

- 68 This agreement is subject to the law of England and Wales and the parties agree to submit to the jurisdiction of the Courts of England and Wales in respect of any dispute or difference arising under the agreement.