

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1. INTERPRETATION

1.1. In these Terms:

'Agreement' means this agreement for the provision of the Service;

'Client' means the person named on the Insertion Order for whom the Agency has agreed to provide the Service in accordance with these Terms;

'Charges' means the charges shown in the Insertion Order or as otherwise agreed in writing between the parties;

'Document' includes, in addition to a document in writing, advert units, plan, design, picture or other image, or any other record of any information in any form;

'Input Material' means any Documents, creatives or other materials, and any data or other information provided by the Client relating to the Service;

'Insertion Order' means the sheet to which this Agreement is appended and contains details of the Service;

'Output Material' means any Documents or other materials, and any data or other information provided by the Agency relating to the Service;

'Service' means the service to be provided by the Agency for the Client and referred to in the Insertion Order;

'Agency' means firstClick digital Ltd, whose registered offices is at The Hub, 20 Dawes Road, London SW6 7EN (registration no. 07431125)

'Working Day' means any weekday, 9am to 5.30pm GMT, on which banks are open for business.

1.2. The headings in this Agreement are for convenience only and shall not affect their interpretation.

1.3. In the event of any conflict between the terms of this agreement and any prior written agreement executed by an authorised officer of both parties ("Prior Agreement"), which are not a previous version of these standard terms and conditions in substantially the same form, the terms of the Prior Agreement shall prevail.

2. SUPPLY OF THE SERVICE

2.1. The Agency shall provide the Service to the Client subject to this Agreement. Any changes or additions to the Service or this Agreement must be agreed in writing by the Agency and the Client.

2.2. The Client shall at its own expense supply the Agency with all necessary Documents or other materials, and all necessary data or other information relating to the Service, within sufficient time to enable the Agency to provide the Service in accordance with this Agreement. The Client shall ensure the accuracy of all Input Material and the terms of the Insertion Order (including any accompanying specification).

2.3. The Client shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Agency shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Client from the time of delivery to, or to the order of the Client.

2.4. The Service shall be provided in accordance with the Insertion Order and otherwise in accordance with the Agency's media plan or proposal.

2.5. Further details about the Service, and advice or recommendations about its provision or utilisation, which are not given in the Insertion Order, media plan or proposal, may be made available on written request.

2.6. The Agency may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the provision of the Service without any liability to the Client.

2.7. The Agency may at any time without notifying the Client make any changes to the Service which are necessary to comply with any applicable statutory requirements, or which do not materially affect the nature or quality of the Service.

2.8. Any requests by the Client for modifications to any Service must be made in writing to be received by the Agency at least Five Working Days prior to the scheduled delivery of the Services (or part thereof). Modifications received by the Agency within five Working Days or less of the delivery of the Service or during their performance will be accommodated at the Agency's sole discretion.

The Agency shall not be liable in event that it is unable to implement such changes. In addition to the total cost of Service as agreed in the Insertion Order, additional costs may be incurred by the Client for changes and/or any other work that the Agency may need to carry out on behalf of the Client and/or for any additional costs incurred for services carried out by third parties instructed by the Agency on behalf of the Client due to any modifications requested by the Client.

3. CHARGES

3.1. Subject to any special terms agreed, the Client shall pay the Charges and any additional sums which are agreed between the Agency and the Client for the provision of the Service or which, in the Agency's sole discretion, are required as a result of the Client's instructions (or lack of instructions), the inaccuracy of any Input Material or any other cause attributable to the Client.

The Client shall be responsible for any and all late payment charges applied by any publisher in accordance with the Late Copy Charges policy agreed by the Internet Advertising Bureau and the Association of Online Publishers.

3.2. The price of the Services shall be the Agency's quoted price or, where a quoted price is no longer valid, the price provided to the Client at the date of acceptance of the Insertion Order. All prices quoted are valid for up to seven days from the date of the Insertion Order or until earlier acceptance by the Client, after which time they may be altered by the Agency upon prior written notice to the Client.

3.3. The Company reserves the right to increase the price of the Service to reflect any increase in the cost to the Agency which is due to any factor beyond the control of the Agency (including without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of service), any change in Service delivery dates, quantities, specifications for the Service requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give the Company adequate information or instructions.

3.4. The Agency shall be entitled to vary the Charges no more frequently than once per annum by giving not less than one month's written notice to the Client.

- 3.5. All charges quoted to the Client for the provision of the Service are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.
- 3.6. The Agency shall be entitled to invoice the Client following the end of each month in which the Service is provided, or at other times agreed with the Client on the Insertion Order. Time for payment of the Charges shall be of the essence.
- 3.7. The Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off or other deduction) within 30 days of the date of the Agency's invoice, subject to satisfactory checks, failing which, in advance of the commencement of the Services, unless otherwise agreed with the Agency.
- 3.8. If payment is not made on the due date, the Agency shall be entitled, without limiting any other rights it may have to;
- 3.8.1. charge interest on the outstanding amount (both before and after any judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until the outstanding amount is paid in full;
- 3.8.2. appropriate any payment made by the Client to such of the Service (or the services supplied under any other contract between the Client and the Agency) as the Agency may think fit (notwithstanding any purported cancellation by the Client); and
- 3.8.3. terminate this Agreement in accordance with clause 7.
- 3.9. The Agency shall be entitled to a general lien on all assets resulting from the Service and property owned by the Client in the Agency's possession or under its control (although the Client may have paid for the same in full) in satisfaction of the whole or part as the case may be of the unpaid price of any Services sold and delivered to the Client under any contract. The Agency shall be entitled to offset any sum or sums owing to it from the Client against any sums owed to the Client by the Agency.

4. RIGHTS IN INPUT MATERIAL AND OUTPUT MATERIAL

- 4.1. The property and any copyright or other intellectual property rights in:
- 4.1.1 any Input Material shall (subject to any such rights of any third party) belong (or continue to belong) to the Client;
- 4.1.2 any Output Material shall, unless otherwise agreed in writing between the Client and the Agency, belong to the Agency. The Agency agrees to assign to the Client with full title guarantee any such property, copyright or other intellectual property rights which it may have for no further consideration, subject to the completion of this Agreement and to payment in full of the Charges and any additional sums payable.
- 4.2. The Client warrants that any Input Material and its use by the Agency for the purpose of providing the Service will not infringe the copyright or other rights of any third party, and the Client shall indemnify the Agency against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 4.3. Subject to paragraph 4.2, the Agency warrants that any Output Material and its use by the Client for the purposes of utilising the Service will not infringe the copyright or other rights of any third party, and the Agency shall indemnify the Client against any loss, damages, costs, expenses or other claims arising from any such infringement.

5. WARRANTIES, LIABILITY AND INDEMNITY

- 5.1. The Agency warrants to the Client that the Service will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Insertion Order and at the intervals and within the times referred to in the Insertion Order. Where the Agency supplies in connection with the provision of the Service any Output Material supplied by a third party, the Agency does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the Output Material to the Agency.
- 5.2. The Agency shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 5.3. Except in respect of death or personal injury caused by the Agency's negligence, or as expressly provided in this Agreement, the Agency shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Agreement, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Agency, its servants or agents or otherwise) which arise out of or in connection with the provision of the Service or their use by the Client, and the entire liability of the Agency under or in connection with the Agreement shall not exceed the amount of the Charges for the provision of the Service.
- 5.4. The Agency shall not be liable to the Client for any change in the law which may give rise to an obligation on the Client to include a statement or disclaimer as part of its Input Material. The Agency shall exercise its reasonable endeavours to implement such additional wording as part of the Output Material as soon as it is received from the Client but accepts no liability in the event that the Client is in breach of its legal obligations, for any fines or damages payable by the Client to any third party or legal authority where insufficient notice has been given by the Client to the Agency to implement such changes and the Client shall indemnify the Agency in the event that the Agency is ordered to pay any such fines or damages.
- 5.5. For the purposes of clause 5.4, the minimum notice required to the Agency in order to effect the changes referred to shall be five Working Days.
- 5.6. The Client shall indemnify the Agency against any and all claims, demands, losses, damages, liabilities, costs, fines and expenses arising out of any breach by the Client of this Agreement.

6. CONFIDENTIALITY

- 6.1. All information disclosed by either party to the other in pursuance of or in connection with this Agreement shall be treated as confidential and each party undertakes not to disclose, publish or divulge any part thereof to any person other than its own employees, agents or representatives who are required to have such information for the performance of any of the obligations hereunder, except to the extent that it is now or subsequently through no fault of the party in question becomes public knowledge, or the party in question is required by law to disclose the information.
- 6.2. For the avoidance of doubt, the Agency's relationship with its suppliers is confidential and the Agency shall not be obliged to disclose details thereof to the Client. Should the Client wish to communicate with one or more of the Agency's suppliers, the Client must first obtain the written permission of the Agency.

7. TERMINATION AND CANCELLATION

7.1. Where expressly provided for in the Insertion Order the Client shall be entitled to terminate this Agreement by giving not less than three months' written notice to the Agency.

7.2. Subject to clauses 7.1 and 7.3, the Client shall not be entitled to cancel this Agreement. No Insertion Order which has been accepted by the Agency may be cancelled by the Client except with the agreement in writing of the Agency and on terms that the Client shall indemnify the Agency in full against all loss (including loss of profit), costs (including the cost of all labour and services purchased on behalf of the Client), damages, charges and expenses (including legal fees and disbursements) incurred by the Agency as a result of cancellation.

7.3. Either party may (without limiting any other remedy) at any time terminate this Agreement by giving written notice to the other if the other commits any breach of this Agreement and fails to remedy the breach (if capable of remedy) within thirty days after being required by written notice to do so, or if the other goes into liquidation, becomes bankrupt, ceases (or threatens to cease) trading, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed over its assets.

7.4. For the purposes of sub-clause 7.3, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance.

7.5. In the event of termination pursuant to this clause, then without prejudice to any other right or remedy available to the Agency, the Agency shall be entitled to stop any Service under way or suspend any further Service, and if the Service has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary. The Agency shall be entitled to retain any and all monies paid by the Client to the Agency in the event of termination of this Agreement, save where the termination is due to the Agency's breach of its obligations under this Agreement. Any refund by the Agency shall be in its absolute discretion.

8. GENERAL

8.1. Subject to clause 1.3, this Agreement (together with the terms, if any, set out in the Insertion Order) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

8.2. A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and shall be deemed to have been received, in the case of service by:

8.2.1. hand, upon delivery to an authorised representative of the recipient;

8.2.2. post, two Working Days (or five Working Days if internationally) after posting; and

8.2.3. fax or email, upon the printing or receipt of a successful delivery report to the recipient's fax machine or server, provided a hard copy shall also be sent by first class post to the other party within twenty-four hours of transmission.

8.3. No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

8.4. If any provision of this Agreement shall be held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected.

8.5. Any dispute arising under or in connection with this Agreement or the provision of the Service shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the president for the time being of the Advertising Standards Authority.

8.6. The Agency shall not be liable to the Client or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of the Agency's obligations in relation to the Service, if the delay or failure was due to any cause beyond the Agency's reasonable control ('Force Majeure'). Without prejudice to the generality of the foregoing, the following shall be regarded as Force Majeure events:

8.6.1. Act of God, explosion, flood, tempest, fire or accident;

8.6.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.6.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.6.4. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Agency or of a third party);

8.6.5. power failure or breakdown in machinery.

8.7. The party affected by the Force Majeure event shall give immediate written notice of that fact to the other party, and if the Force Majeure event exceeds a period of sixty days, the party affected by the Force Majeure event may terminate the Agreement forthwith by written notice.

8.8. The Client agrees that the Agency may cite the Client as a client of the Agency in press releases and marketing material.

8.9. English law shall apply to this Agreement, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.