



# TERMS OF BUSINESS

## **YOUR DECLARATION**

By commencing any business with TFA, as a customer or a supplier, you acknowledge that you have read our Terms of Business, understand them and agree to be contractually bound by them in full, whether tacitly or otherwise. You also accept that our Terms of Business are final and supersede any other business or contractual terms you may have, unless explicitly agreed otherwise by us, in writing.

**If you have any questions please raise them with your point of contact, or put them in writing, at your earliest convenience.**

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## TERMINOLOGY

**“Acceptance Date”** means the date on which the Customer notifies Us that he has received and accepts the “Final Version” as being satisfactory, or otherwise pursuant to clause 2.4.

**“Brief”** and **“Specification”** mean the last written document provided by the Customer to Us, or by Us to the Customer, that is deemed the agreed project brief or specification prior to work being started, or referred to in the Order. In the absence of either, the delivery of the project being satisfactory will be decided by Us.

**“Confidential Information”** means all information designated as such by either party in writing together with all such other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel and customers of either party or information which may reasonably be regarded as the confidential information of the disclosing party.

**“Contract”** means a contract, subject to these terms and conditions, for the provision of the Services between Us and the Customer.

**“CPI”** means Consumer Price Index.

**“TFA”, “Us”, “We”** and **“Our”** refer to the entity of TFA Marketing Ltd, a company registered in England no. 07074043.

**“Our Website”** means the main trading website for Us and any of our trading businesses.

**“Customer”** and **“Client”** mean the person, company, firm or body purchasing the Services from Us, directly or indirectly.

**“Customer Content/Data”** means text, graphics, photographs, sounds, information, data, music, video, film or any other copyright work publicly available on the Website or provided for publication on the Website either by the Customer or any other third party (excluding Us) commissioned by the Customer, together with all User Generated Content and information regarding users (such as, for example, the number of page impressions, users email addresses or other information posted by users or depicted by the Website about users).

**“Customer Representative”** means the person appointed by the Customer who shall have the right on behalf of the Customer to provide instructions and sign off as satisfactory any/all elements of a project and its delivery.

**“Digital Asset”** means a digital property such as, but not limited to, a website or app (being a combination of files and data sources) designed, developed, hosted, and/or optimised by Us for the Customer.

**“Digital Asset Development Services”** means all work in connection with the planning, design, development and maintenance of a digital property such as, but not limited to, a website or app, to include but not limited to, initial technical specification, prototype layouts, graphic design, wireframe concepts and all types of “coding” (e.g. HTML, CSS, JavaScript, PHP & MySQL programming).

**“Draft Version”** means the version of the Project designed and developed by Us pursuant to the Order and presented to the Customer with or followed by a request for a List of Changes.

**“Due Date”** means the issue date of an invoice plus any payment terms stated on that invoice. For example, an invoice issued on 1st September with 30 days

payment terms stated will effectively become overdue on 2nd October. If none are stated, then immediate payment is expected.

**“Domain Name”** means the name registered with an Internet Registration Authority used as part of the Customer’s URL.

**“Final Version”** means the version of the Project submitted to Customer for final approval.

**“Hosting Service”** means the installation and storage of the Digital Asset files, any domains and/or any other associated or expressly agreed files and/or data, mailboxes and email accounts on to a server or Cloud-based provision service.

**“Inappropriate Content”** means a content which is unlawful, harmful, obscene, vulgar, indecent, pornographic, seditious, offensive, defamatory, threatening, abusive, harassing, hateful, liable to incite racial hatred, menacing, blasphemous or invasive of another’s privacy.

**“Intellectual Property Rights”** means patents, trademarks, service marks, database rights, design rights (whether registered or otherwise), applications for any of the foregoing, copyright, know-how, trade or business names, domain names and other similar rights or obligations whether registrable or not and in any territory or jurisdiction (including but not limited to the United Kingdom).

**“Minimum Term”**, unless stated otherwise on the Order or Quotation, for SEO and Social Media Services means 3 months from the date of commencement of the relevant Service, 12 months for Hosting and for all other Ongoing Services means 1 month from the date of commencement of the relevant Service. If notice of cancellation is not provided, in writing, a minimum of 30 days before the end of the term, it will be deemed that the Customer wishes to continue the arrangement and it will be extended by the same duration as the Minimum Term.

**“Ongoing Services”** means Hosting, SEO, PPC, social media Services, call tracking or any other services of an ongoing nature offered by Us which impose a recurring charge to the Customer.

**“Order”** means a request in respect of any Services made by the Customer to Us.

**“PPC”** means Pay Per Click.

**“Project”** means the asset, Service or scope of the work being delivered, pursuant to the order placed by the Customer and any agreed quotation.

**“SEO”** means Search Engine Optimisation services being the means or process of affecting the visibility of a website or a web page in a search engine’s (e.g. Google) search results.

**“Server”** means Our web server or a web server belonging to Our nominated sub-contractor.

**“Services”** means the services which are the subject matter of the Contract, being the work and/or services or any of them to be performed by Us for the Customer pursuant to the Order.

**“Social Media Channels”** means any and/or all forms of social media forum, to include, but not limited to Twitter, Facebook, Google+, YouTube and Pinterest used in connection with the social media Services provided to the Customer pursuant to this Contract.

**“Supplier”** means any sub-contractor or third-party commissioned, contracted or employed by Us to provide Services, in full or in part, for a Customer.

**“User Generated Content”** means any information in any form (including visual and textual) published or otherwise made available (directly or indirectly) on the Website by any person, company, firm or body (excluding Us) accessing the Website via the Internet or by any other means.

**“URL”** means a uniform resource locator; the physical address of a website, web page or online resource.

**“Video”** means the audio and/or visual recording created by Us pursuant to this Contract.

## 1. GENERAL TERMS

### 1.1. PRICING, FEES & CHARGES

- 1.1.1. Our standard pricing structure is based on £85 per hour for creative and digital services, including chargeable amendments, and £100 per hour for consultancy services. Our minimum charge is for one hour and all charges are rounded up to the nearest half hour.
- 1.1.2. All quoted and estimated prices are net, excluding VAT which will be added to any bills or invoices, where applicable.
- 1.1.3. Estimates are subject to change.
- 1.1.4. Quotations are valid for 30 days from when dated.
- 1.1.5. A working capital payment on account may be required for projects of higher value. This is typically 25-50%, depending on the value of the project, and is required on a pro-forma before work can be started.
- 1.1.6. Work may be invoiced in part, against the total project fee or against costs allocated to individual stages of the project.
- 1.1.7. If payment is not made on any invoice by the Due Date, We reserve the right to apply interest at the rate set out under the Late Payment of Commercial Debts (Interest) Act 1998 from the date that falls 30 days after the invoice issue date, for every day it remains unpaid in full or in part. (e.g. 8% + Bank of England base rate).
- 1.1.8. Additional fees may be applied for services such as supply of proofs, artwork, supply of individual files or retrieving work from our archive to cover our time.
- 1.1.9. Where an Order is placed or authorised by a director or officer on behalf of a limited liability company or partnership, the Services are provided on the understanding those directors/officers will be personally liable for, and hereby guarantee to pay, any and all sums owing to Us by the Customer pursuant to this Contract.

### 1.2. AMENDMENTS, CHANGES & CORRECTIONS

- 1.2.1. All quotations include two rounds of amendments or corrections (within reason) at no additional charge. This does not include what We would class as “substantial” changes, or changes that We feel are not consistent with our understanding of the brief against what We delivered. Where no written brief has been provided, the interpretation of “substantial” is entirely at our discretion and We reserve the right to make additional charges as necessary for additional time requested or necessitated.
- 1.2.2. We understand that this method of billing for amendments is not suitable for some clients so We offer a flexible alternative whereby additional rounds of amendments can be built into each quoted project price. This is currently set at 10% of the project/stage cost per

additional round, so 3 extra rounds of changes (4 rounds in total) would be an additional 30% on the quoted project/stage price.

### 1.3. PITCHES & TENDERS

- 1.3.1. We reserve the right to charge fees for work on projects that are suspended or ceased, for amendments, additional works and intellectual properties that are provided.
- 1.3.2. Prices quoted or estimated prior to pitching cannot be renegotiated to a lower price after the pitch. The total value of the awarded project must not be less than 75% of the total estimate or quotation provided.
- 1.3.3. We reserve the right to charge for our time (resource invested) and our intellectual property (work delivered) relating to an unpaid pitch or speculative arrangement if you the client:
  - 1.3.3.1. vary the terms of the arrangement under which We agreed to take part initially or mislead Us about the value of the project, the level of competition or our likelihood of being successful;
  - 1.3.3.2. utilise in any commercial manner our work or our ideas in such a way that could have earned Us income or that would typically be paid for;
  - 1.3.3.3. delay the awarding decision for more than 1 month or cancel the project pitched for;
  - 1.3.3.4. do not, within 7 days, return any physical work supplied to support our pitch (such as presentation boards) and confirm that any digital files supplied (such as presentation PDFs) have been destroyed.
  - 1.3.3.5. Fail to provide clear and accurate confirmation of who the awarded party was, in order for Us to confirm the validity of the pitch.

### 1.4. BILLING & PAYMENT

- 1.4.1. We bill for our work when each quoted stage is completed. Typically We invoice when first-stage concept work is supplied, when first-stage design or artwork is supplied and when chargeable amendments are completed.
- 1.4.2. A project quote or estimate may be invoiced in full after 14 days whether considered complete or not, at our discretion, if amendments, approval or sufficient communication are not provided and/or actions prevent the project being progressed or concluded making our position untenable. We are not obliged to complete the project under such circumstances but, in most instances, will agree to do so.
- 1.4.3. We reserve the right to bill for our intellectual property if any of our work is used for a purpose not originally intended and quoted for, or is used by another company without our agreement. For example, if another creative agency takes some of our work and adapts it for another purpose.
- 1.4.4. Payment terms are immediate from the date of invoice unless credit terms have been agreed.
- 1.4.5. Standard credit terms are payment in full within 30 days from the date of invoice issue unless stated otherwise on the relevant invoice.
- 1.4.6. If payment is not made by the Due Date, in accordance with clause 1.4, We reserve the right to suspend all and any related Services without

any liability to Us for the Customer's losses as a consequence of Us taking this action.

## 1.5. PRIVATE SOLICITATIONS

1.5.1. If your organisation hires or attempts to hire any current TFA employees at any time, either directly or indirectly, causing them to leave our business, your organisation will be invoiced a fee equal to 30% of that person's annual salary, representing common recruitment industry fees, and your organisation must pay this invoice within 30 days.

1.5.2. If your organisation undertakes work of any kind directly with a member of staff or a supplier we have an existing relationship with, without our knowledge and consent, whether paid or unpaid, We reserve the right to charge for any loss of profits We believe would result from that breach.

## 1.6. ASSIGNMENT & SUB-CONTRACTING

1.6.1. Whilst We endeavour to keep aspects of a Project within our permanent team, We reserve the right to outsource the Project, as required in the Order, in part or in full to any sub-contractor or third-party supplier.

1.6.2. We are not obliged to share with the Customer any information on our sub-contractors or suppliers.

1.6.3. The Customer undertakes not to deal with our sub-contractors or suppliers directly and, in the event any Order is placed by the Customer directly with one of our sub-contractors or suppliers, We reserve the right to seek damages for any loss of profits We would have received.

1.6.4. None of the rights or obligations of the Customer under the Contract may be assigned or transferred in whole or in part without the prior written consent of TFA.

1.6.5. TFA shall be entitled to sub-contract any work relating to the Contract without obtaining the consent of, or giving notice to the Customer.

1.6.6. TFA shall be free to assign its rights in the Contract to any third party without giving prior notice to the Customer.

## 1.7. DELIVERY AND COMPLETION DATES

1.7.1. If you are quoted for a "minimum period" of commitment for any ongoing service, such as SEO, you will be charged for the full period at the rate quoted if you cancel for any reason during that period, or make delivery of the service untenable.

1.7.2. Unless specified on the Order, the dates and timeframes for carrying out the Services are approximate only. The Customer hereby acknowledges and agrees that time is not of the essence for delivery or performance.

1.7.3. Without prejudice to clause 1.12, We will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform.

1.7.4. No delay shall entitle the Customer to reject any delivery or performance or any other Order from the Customer, or to repudiate the Contract or the Order.

## 1.8. WARRANTIES

1.8.1. The Customer warrants that:

1.8.1.1. it has the right to, and permits Us to include any element of the Customer Content/Data on or in any Website, Video and/or Social Media Channels, or has obtained the necessary rights from third parties to do so, and will hold harmless, protect and defend Us and our sub-contractors from any claim or suit arising from the use of such material furnished by or on behalf of the Customer;

1.8.1.2. it will not supply Us with, or upload to the Website, post, email, or otherwise transmit (or allow to be transmitted) through the Website or via any Social Media Channels (or request that We carry out any such upload, posting, email or transmission on the Customer's behalf), any Customer Content/Data or User Generated Content that is:

- Inappropriate Content;
- harmful to minors in any way;
- in breach of any third party right under any law or under a contractual or fiduciary relationship;
- an infringement of any Intellectual Property Rights;
- unsolicited or unauthorised advertising, promotional material, "junk mail", "spam", "chain letters", "pyramid schemes", or any other form of solicitation;
- or contains software viruses or any other computer code, files or programmes designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- intentionally or unintentionally a violation of any applicable law and/or regulation having the force of law;

1.8.1.3. it will comply with the Data Protection Act 1998 and all current legislation, such as GDPR, governing how data is stored and used.

1.8.2. The Customer accepts that We are under no obligation to monitor or approve the Customer Content/Data or User Generated Content and accepts that We exclude all liability of any kind for all material comprising the same.

1.8.3. TFA warrants that:

1.8.3.1. it shall perform the Services with reasonable skill and care in accordance with the standards generally observed in the industry for similar services; and

## 1.9. DATA PROTECTION

1.9.1. The Customer acknowledges and agrees that any personal details, including its name, address, telephone number, email address and payment records may be processed by and/or on behalf of TFA in connection with and/or as a result of the provision of any Services provided by TFA.

1.9.2. The Customer indemnifies TFA from any penalties or legal implications arising from data it holds or uses on the client's behalf.

1.9.3. The Customer takes full responsibility for any and all issues that may arise relating to the storage, processing or usage of its data by TFA.

## 1.10. INTELLECTUAL PROPERTY AND LICENCE

1.10.1. All rights, title and interest in and to the Intellectual Property Rights created, developed and subsisting or used by TFA in any works provided including but not limited to design, video, software and coding all remain the sole property of TFA.

- 1.10.2. All artworks are provided as either low resolution PDF documents or high-resolution, production PDF documents.
- 1.10.3. We do not supply open, editable artwork files unless explicitly agreed and there may be an intellectual property charge for doing so, based on a fair valuation of the property, and entirely at our discretion.
- 1.10.4. We reserve the right to use any work that We produce for self-promotion unless protected by a formally agreed confidentiality agreement.
- 1.10.5. We reserve the right to include a small self-promotional sign off on all client websites that states the website was created by TFA and provides an active hyperlink to our website.
- 1.10.6. All rights, title in and to the Intellectual Property Rights in the Customer Content/Data belonging to the Customer shall vest exclusively and unconditionally in the Customer.
- 1.10.7. TFA hereby grants to the Customer a non-exclusive, transferable, worldwide and perpetual licence to use the material comprising TFA's Intellectual Property Rights contained in a Website and Content Management System (CMS) for the sole purpose of operating the Website.
- 1.10.8. The Customer agrees that TFA may use the Customer's name and Intellectual Property Rights solely to the extent necessary for the purpose of providing the Services, such as by including them in or on a Video or Website, referring to them in paperwork and in discussions with third parties in order to indicate the nature of the Services being provided, or otherwise pursuant to clause 1.10.9. The Customer warrants that no such use shall infringe the rights of any third party.
- 1.10.9. The Customer hereby authorises TFA to reproduce, use, disclose, display, exhibit, transmit, perform and create derivative works from all works supplied and distribute such material (or any part of it), unless specifically agreed otherwise. For the avoidance of doubt, TFA shall have the non-exclusive right to use all work created for the Customer for its own promotional use in customer and prospective customer presentations, showreels and on TFA's websites.
- 1.10.10. TFA shall be free to use any ideas, concepts, know how or techniques acquired for any purpose whatsoever including but not limited to developing, manufacturing and marketing products and any other items incorporating such information unless specifically agreed otherwise.
- 1.10.11. Subject to TFA duly rendering the Services and not being in breach of any of its material obligations under this Contract, the Customer authorises TFA to insert, or have an appropriate third party insert credit as the producer of any works, such as a link on the Customer's website to the TFA website. Provided that the Customer has notified all third parties of its credit obligation to TFA under this Contract, no inadvertent failure by the Customer or by any such third party to accord TFA such credit will constitute a breach of this Contract by the Customer, provided further that it uses its reasonable efforts to remedy such failure where practicable.
- 1.10.12. Subject to this clause 1.10, all rights, title and interest in and to any pre-existing Intellectual Property Rights owned, created, developed, subsisting or used by TFA in or in connection with the provision of the Services shall remain the sole property of TFA.
- 1.10.13. If TFA makes any subscription services available to the Customer during the course of this Contract, the Customer shall only acquire a non-exclusive, personal, non-transferable license to use or receive the benefit of such subscription services/materials until this Contract is terminated and is responsible for all subscription costs thereafter.
- 1.11. DELAYS, UNTENABLE CONDITIONS, CANCELLATIONS & TERMINATION**
- 1.11.1. We reserve the right to terminate our commitments and liabilities to the completion of any project if it has been delayed for 2 months or more with insufficient constructive direction (at our discretion), irrespective of what has been paid on account. This is to safeguard Us from added costs due to mothballing where a project may be started, then put on hold by you for an extensive duration with Us later expected to finish the work when factors could have changed and may render some of the work done redundant or increase our costs (for example, on a website new browser, device and operating system versions).
- 1.11.2. Unless stated otherwise on the relevant quotation, all Ongoing Services are subject to a 1 month notice period for cancellation. If you do not give sufficient notice, the period will automatically extend to a full 12 months the day the initial period quoted has expired. You will be charged the full value of any recurring monthly management fees, and any advertising costs paid up-front, to the date that falls 1 month after you informed Us in writing that you wish to cancel. Cancellation will only be accepted in writing.
- 1.11.3. Unless otherwise agreed in writing with TFA, the Customer acknowledges and agrees that the duration of the Contract insofar as it relates to any Ongoing Services will be for the Minimum Term, and in any event, subject thereafter to the notice provisions in this clause 1.11.
- 1.11.4. Where one applies, and following the expiry of any applicable Minimum Term, either party may terminate an Ongoing Services Contract by giving 1 months' written notice.
- 1.11.5. Either party may terminate the Contract immediately by written notice if the other party is in material breach of the Contract and fails to remedy the breach within 30 days of written notice, requiring it to do so, subject to the provisions of clause 1.11.14.
- 1.11.6. Either party may terminate the Contract immediately and without notice if:
- 1.11.6.1. the other enters into a composition with its creditors;
- 1.11.6.2. an order is made for the winding up of the other;
- 1.11.6.3. an effective resolution is passed for the winding up of the other (other than for the purpose of amalgamation or reconstruction on terms approved by the first party (such approval not to be unreasonably withheld); or
- 1.11.6.4. the other has a receiver, manager, administrative receiver or administrator appointed in respect of it.
- 1.11.7. TFA shall be entitled to terminate the Contract immediately upon service of written notice to the Customer if:
- 1.11.7.1. any invoice remains outstanding for more than 14 days; or
- 1.11.7.2. the Customer fails to co-operate and/or provide TFA with clear instructions, information or approval requested by TFA for more than 30 days; or
- 1.11.7.3. TFA considers (at its sole discretion) it reasonable to do so.

- 1.11.8. Termination of the Contract shall be without prejudice to any other rights or remedies of either party, particularly clause 1.11.14. including but not limited to framing or linking to third parties' websites:
- 1.11.9. Upon termination of this Contract for any reason, and where work has been undertaken to a Website, the Customer shall grant TFA immediate access to that Website (whether hosted by TFA or otherwise), and/or provide any/all such information necessary to facilitate such access for the purpose of disabling any links and/or removing any other SEO software or services which are the subject of paid subscriptions. 1.12.3. TFA will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any economic loss of any kind (including but not limited to loss of profit, business, contracts, revenue or anticipated savings), any damage to the Customer's reputation or goodwill or any other special, indirect or consequential loss (whatsoever and howsoever caused) which arises out of or in connection with the Contract.
- 1.11.10. If the Customer fails to provide immediate access to the Website pursuant to clause 1.11.9 (above) the Customer shall indemnify TFA for any associated subscription charges incurred by TFA. 1.12.4. TFA will not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Server, including connectivity to the internet, its use (including but in no way limited to any unlawful or unauthorised access or use by any third party, software, virUs or otherwise), any application, support or otherwise, or any action or inaction attributable to TFA's sub-contractors and/or service providers, except to the extent which it is unlawful to exclude such liability.
- 1.11.11. Upon termination of this Contract (howsoever arising), without prejudice to its other rights and remedies TFA shall be entitled to receive at least, payment of all sums which TFA remains contractually obligated to pay to any third parties associates with the Services provided pursuant to this Contract. 1.12.5. Nothing in this Contract shall exclude or limit the liability of TFA for fraudulent misrepresentation or for any death or personal injury caused by TFA's negligence.
- 1.11.12. The terms of clauses 1.10 (Intellectual Property), 1.12 (Indemnity and Limitation of Liability) and 1.13 (Confidentiality) shall survive the termination (howsoever arising) of this Contract. 1.12.6. The Customer acknowledges and agrees that TFA's total liability in respect of the warranty provided under clause 1.8.3 shall be limited to re-performance of the relevant Service(s) or parts thereof or a refund of any charges paid by the Customer to TFA in relation to the relevant Service(s) in dispute in the 12 months preceding any claim.
- 1.11.13. Where a service is cancelled at short notice of less than 48hrs, such as a video or photoshoot, TFA reserves the right to bill in full for all fees pertaining to that days work, including but not limited to third-party and sub-contractor fees. 1.12.7. Without prejudice to clause 1.12.6 above, the Customer acknowledges and agrees that TFA's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the amount paid by the Customer pursuant to the relevant Contract.
- 1.11.14. If the Customer wishes to cancel any project, in full or in part, after a quotation has been accepted and/or an Order for the work provided, We reserve the right to invoice in full for the total value of the Order whether or not the work has been started or completed. 1.12.8. Neither party shall be liable for any failure in the performance of any of its obligations under the Contract caused by factors beyond its reasonable control.
- 1.11.15. Where a schedule of works has been agreed, for example by quote or proposal with an agreed total price, but the client cancels any part of that work, or delays any part of that work for a period of at least 12 months, we reserve the right to invoice in full for that work whether or not it has been delivered and to invoice for any discounts or special rates that were part of a negotiated total project price. 1.12.9. Where We provide any solution that stores data, such as a website or database, the Customer agrees to take full legal responsibility for the compliance of how that information is stored, seek independent legal advice where necessary and agrees that no communications from TFA will constitute any form of legal advice.
- 1.12. INDEMNITY AND LIMITATION OF LIABILITY** 1.13. CONFIDENTIALITY
- 1.12.1. TFA shall not be liable to the Customer for any changes, adjustments, loss or damage whatsoever or howsoever caused by the Customer or any third party (whether or not authorised by the Customer), accessing the backend of the Website. In the event that the Customer requires TFA to undertake work to rectify or restore a Website following changes or damage made or caused by the Customer or any third party (such work including, but not being limited to restoring back-ups or fixing functionality), the Customer hereby agrees to be liable for TFA's reasonable charges for such work. 1.13.1. Each party agrees and undertakes that it will hold in complete confidence any Confidential Information disclosed to it, and will not disclose it in whole or in part at any time to any third party, nor use any Confidential Information for any purpose other than the performance of its obligations under the Contract. This provision shall survive the termination of the Contract for any reason for a period of 3 years commencing immediately on the date of such termination.
- 1.12.2. The Customer shall indemnify TFA against any loss, damage, cost or expense (including reasonable legal fees and expenses) TFA may suffer or incur as a result of: 1.13.2. The obligations set out in this clause 1.13 shall not apply to any Confidential Information which:
- 1.12.2.1. any act, omission, neglect or default of the Customer, its agents, or employees; 1.13.2.1. at or prior to the time of disclosure was known to the receiving party as evidenced in writing, except to the extent that such information was unlawfully appropriated;
- 1.12.2.2. any claim arising as a result of a breach of any of the warranties given by the Customer under this Contract;
- 1.12.2.3. work done in accordance with the Customer's instructions in connection with hosting the Website on the Server,

- 1.13.2.2. at or after the time of disclosure becomes generally available to the public other than through any act or omission on the part of the receiving party;
- 1.13.2.3. is received from a third party who was free to make such disclosure without breaching any legal obligation;
- 1.13.2.4. is independently produced by the receiving party; or
- 1.13.2.5. is required to be disclosed by law, court order or request by any government or regulatory authority.

## 1.14. FORCE MAJEURE

- 1.14.1. TFA shall not be liable for failure to perform the Services if such failure is as a result of any act beyond its reasonable control including, without limitation, fire, flood, earthquake, storm, hurricane or other natural disaster, war, civil unrest, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone service.

## 1.15. NOTICES

- 1.15.1. Termination notices must be sent to [cancellations@tfamarketing.co.uk](mailto:cancellations@tfamarketing.co.uk)
- 1.15.2. Any other notices must be sent in writing postal service to TFA at The Old Courthouse, 19 Market Square, Stony Stratford, Milton Keynes MK11 1BE.
- 1.15.3. Any notice or document shall be deemed served: if delivered, at the time of delivery; if posted, 48 hours after posting, and if sent by electronic mail, at the time of sending.

## 1.16. INVALIDITY

- 1.16.1. If any provision (or part of a provision) of this Contract is found by any court or administrative body of a competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 1.16.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## 1.17. ENTIRE AGREEMENT

- 1.17.1. The Customer acknowledges that it has not been induced to enter into the Contract by any representation or warranty other than those contained within this Contract; and having negotiated freely, agrees that it shall have no remedies in respect of any representation or warranty that is not set out in this Contract, except in the case of fraud.

## 1.18. THIRD PARTY RIGHTS

- 1.18.1. A person who is not party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 1.19. LAW AND JURISDICTION

- 1.19.1. The Contract shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

## 2. SERVICE-SPECIFIC TERMS

### 2.1. CREATIVE SERVICES

- 2.1.1. Creative services are provided on an interpretative basis and, as such, must be guided by a clear, written brief.
- 2.1.2. Where no written brief is provided or agreed, TFA's decision will be final as to whether the client's verbal brief has been satisfied by work provided and this will not be determined at the client's discretion.
- 2.1.3. Where the Customer requires copy to be written, and where no indication of volume (number of words) is given, copy will be written that is deliverable within the amount of time that has been quoted for.
- 2.1.4. The Customer may not reject design, copy or other creative service work as being unacceptable for subjective reasons: for example, style, opinion or simply not liking the work, nor may the Customer reject creative service work where We have had to interpret a verbal brief. Where a written brief has been agreed, the client can only reject work on the basis We have, by reasonable measure, fundamentally not followed the brief and, in this instance, we must be given the opportunity of at least two further attempts to remedy any reasonably-defined failure.
- 2.1.5. Once creative content has been approved or accepted by the Customer, that version is deemed final and any further changes may be subject to additional fees.
- 2.1.6. The Customer takes full responsibility for the accuracy of copy supplied and TFA is exempted from any liability arising from any losses the Customer incurs as a result of errors, inaccuracies or omissions.

### 2.2. SEARCH ENGINE OPTIMISATION (SEO)

- 2.2.1. Where specified in the Order, We shall provide SEO Services. In order for Us to provide SEO Services to the Customer, the Customer hereby agrees to provide administrative or back-end access to the Website; permission for Us to make changes to the Website in pursuance of the SEO Services; and access to any existing traffic statistics for the Website for analysis and reporting purposes.
- 2.2.2. Our SEO service is provided for a minimum period of 3 months from date of order. It will then automatically renew for an additional 3-month contractual period, under the same terms, unless notice of cancellation is provided in writing at least 30 days before the 3-month period expires.
- 2.2.3. The Customer acknowledges and accepts that Our ability to provide the SEO Services, in whole or in part, may be restricted by the Customer's failure to comply with any part of clause 2.1 above. In the event of any breach of clause 2.1, the Customer shall be prohibited from disputing the reasonableness or otherwise of the SEO Services provided following such breach, and shall in any event remain liable for Our SEO charges in full for the duration of the Contract.
- 2.2.4. We shall use Our reasonable endeavours to improve the ranking of the Website in the search engine known as Google; however, as it is solely at the discretion of Google as to how it lists websites, We do not in any way guarantee the results of Our endeavours. For the avoidance of doubt, the Customer accepts that We cannot and do not guarantee any particular or specific position or ranking on any search engine, or the increase of any business/revenue to the Customer.



2.2.5. We shall have no liability to the Customer for any changes to the position of the Website in any Google results in response to a search.

2.2.6. SEO Services may not be suspended by the Customer during the Contract term.

## 2.3. WEBSITE & SOFTWARE DEVELOPMENT

2.3.1. Where specified in the Order, We shall provide Digital Development Services. We agree to design, build and/or develop the relevant Digital Asset (or any part of it) in accordance with the Brief and/or Specification. In the event of a dispute arising as to whether the Digital Asset satisfies the Brief and/or Specification, Our decision shall be final and binding.

2.3.2. The Customer acknowledges that Our ability to provide Digital Asset Development Services is dependent upon the full and timely co-operation of the Customer. The Customer therefore agrees to provide to Us, in a timely and suitable manner and in a format required by Us, such information as may be reasonably necessary to enable Us to complete the Digital Asset in accordance with the Brief and/or Specification; and shall not supply any Customer Content/Data which constitutes Inappropriate Content, unsolicited advertising or promotional material, infringes the Intellectual Property Rights of a third party or is fraudulent.

2.3.3. We shall convert any Customer Content/Data into a display-ready format for the Digital Asset, to meet the Brief and/or Specification. If the Customer Content/Data is not in a suitable digital format, as agreed between Us and the Customer, an additional charge may be made for its conversion by Us.

2.3.4. It shall be the responsibility of the Customer (and not Us) to review and approve the content of the Digital Asset (including, without limitation, the spelling and accuracy of all information and data) as soon as is reasonably possible. We shall have no liability to the Customer for any inaccuracies.

2.3.5. Upon delivery of the Draft Version to the Customer, the Customer shall be permitted an opportunity to submit a single List of Changes to Us. Any additional or subsequent changes required to the Draft Digital Asset following the submission of the List of Changes by the Customer, or changes which depart from the Specification shall be charged to the Customer on a time cost basis.

2.3.6. The Customer shall be deemed to have accepted the Final Version as having been satisfactorily completed if the Customer uses any part of the Final Version to offer or provide any goods or services to any third party; or uses the Digital Asset other than for test purposes.

2.3.7. The Customer shall not be entitled to the Digital Asset (or any part or version of it) unless or until he has paid all of Our charges in relation to the Digital Asset Development Services in full.

2.3.8. As the Customer's conduct may impact on Our ability to complete the Digital Asset, the Customer acknowledges and agrees that We shall be entitled to payment for the full value of the Order, irrespective of any work undertaken in the event that the Customer's acts or omissions prevent Us from preparing or completing the Digital Asset and We have otherwise undertaken all of the work that it is reasonably required or able to undertake pursuant to this Contract.

## 2.4. HOSTING

2.4.1. Where specified in the Order, We shall provide Hosting Services. The Customer shall be solely responsible for the accuracy, legality, currency

and compliance of the Digital Asset and User Generated Content and will be solely liable for false, misleading, inaccurate, or infringing information contained or referred to therein.

2.4.2. Our hosting service is provided for a minimum period of 12 months from date of order. It will then automatically renew for an additional 12-month contractual period, under the same terms, unless notice of cancellation is provided in writing at least 30 days before the 12-month period expires.

2.4.3. The Customer acknowledges and accepts that We may be required by law to monitor the Digital Asset content and traffic and, if necessary, give evidence of the same together with the use of the logon ID to support or defend any dispute or actionable cause or matter which arises in relation to the same.

2.4.4. We do not warrant that Hosting Services or the Server will be continuously available at all possible times (24 x 7 x 365 days), but will use reasonable endeavours to keep downtime to a minimum; and the Customer agrees that We shall have no liability to the Customer for any consequences in the event of any such downtime.

2.4.5. We may need to, at times, temporarily suspend the Hosting Service for repair, maintenance or improvement and will give the Customer as much notice as is reasonably practicable in the circumstances before doing so. We will also restore the Hosting Service as soon as is reasonably practicable.

2.4.6. The Customer accepts the Hosting Services and Server "as is" with any faults or failings and without any representation, warranty or guarantee whatsoever, express or implied, including without limitation any implied warranty of accuracy, completeness, quality, continuity of service, connectivity and fitness for a particular purpose.

2.4.7. The Customer is permitted 20GB of website storage and 20GB of traffic per calendar month (unless explicitly agreed otherwise in the Specification and the Order). In the event that either of these limits are exceeded in any given month We reserve the right to transfer the Digital Asset to an alternative Server, and to increase Hosting charges accordingly. The Customer will be given 14 days' notice of any such proposed changes to its Hosting Services.

2.4.8. Where either party gives notice to transfer any files, domains, mailboxes or other Digital Asset files away from Us, We may charge a transfer fee, based on the time required, and We reserve the right not to affect any such transfer unless or until any transfer fee and any other sums owing to Us are paid in full.

2.4.9. We shall cease to Host or in any way retain any Digital Asset files, domains, mailboxes or other files or data on behalf of the Customer 14 days following the date upon which We deliver such files, domains, mailboxes and/or data to the Customer, irrespective of whether the Customer has procured and/or effected any alternative hosting solutions.

2.4.10. As there can be major differences between how Internet browsers and devices process and display websites, all websites and web-apps will be developed to function to a good standard in the most popular current Internet browsers on PC and Mac. For example, these are, at time of writing, Google Chrome (PC) and Safari (Mac). Websites, apps and software will be developed to function well on current devices and platforms, with reasonable degradation through older software and hardware versions. Anything older than 4 years will not be supported. Most websites and applications may work well in software and on devices that are up to 10 years old but we cannot and do not guarantee this.

## 2.5. PAID & SPONSORED DIGITAL ADVERTISING

- 2.5.1. The Customer hereby consents and agrees to:
- 2.5.2. provide Us with access to a Google Analytics account, which shall be connected to a Google Adwords account in the Customer's name for the duration of the Contract;
- 2.5.3. the setup of a relevant advertising platform account for each channel, by us, which shall be used by Us solely in connection with any PPC Services provided to the Customer; and
- 2.5.4. Us retaining ownership and/or control of any such accounts set up on behalf of the Customer unless or until the Customer has paid its monthly charges pursuant to the Contract for a minimum of 3 consecutive months.
- 2.5.5. Subject to clause 2.5.4, any paid advertising account (e.g. Google Adwords) linked to any PPC Services shall belong to the Customer.
- 2.5.6. We do not in any way guarantee the results or effects of our PPC Services. For the avoidance of doubt, the Customer accepts that We do not and cannot guarantee the number of occasions when an advert may be displayed by the advertising vendor, the number of clicks a Customer's advert might receive, where those clicks may come from, any specific position or ranking on any search engine, or the increase of any business/revenue to the Customer.
- 2.5.7. The Customer acknowledges and accepts that it is the Customer's responsibility to ensure that all monies due and owing to advertising vendors are paid directly to it, unless otherwise agreed in writing.
- 2.5.8. We shall take reasonable steps to ensure that We do not substantially exceed any PPC budget set by the Customer. However, We will not accept any liability for any charges made by an advertising vendor in excess of any such monthly budget, save where such sum is exceeded by more than 100% of the Customer's budget in the immediately preceding month. In this event, any potential liability to the Customer shall be limited to a sum equivalent to the Customer's average monthly budget for the PPC Services provided by Us in the preceding 3 months.
- 2.5.9. The Customer agrees that it will not make changes to, or contract any other supplier to make changes to, the campaigns that We are working on as this could affect the work We are doing.
- 2.5.10. We do not accept liability for the quality or relevance of clicks that the advertising vendor may provide, as a result of our configuration, nor do We accept liability for any costs that incurred by the Customer that it deems inappropriate, incorrect or unwanted.
- 2.5.11. The Customer will not vary payment dates of our invoices, or any sums due, based on results or campaign performance as these cannot be guaranteed.

## 2.6. MEDIA (PHOTOGRAPHY, VIDEO & AUDIO PRODUCTION)

- 2.6.1. Stock images, stock footage and stock audio are not included in any of our pricing. If stock media must be provided, We will charge for this separately.
- 2.6.2. Where We provide media services, We retain the intellectual property rights to all images that are created.
- 2.6.3. Expenses will be calculated and charged for separately, after a shoot and are not incorporated into any quoted photography fees.

- 2.6.4. Where specified in the Order, We shall provide the Services in accordance with the Briefing Document, and shall provide such other services as are agreed between the parties from time to time in connection with the Services. The Services include, but may not be limited to:
- 2.6.5. consulting with, and where agreed, the writing of any script for narration in the Video;
- 2.6.6. casting voice artists and presenters in consultation with the Customer;
- 2.6.7. selecting, gathering, holding and developing in consultation with the Customer material that is to be contributed to the Video by third parties;
- 2.6.8. making all necessary preparations for the filming and production of the Video including providing or engaging the crew, studio and other facilities and services necessary to render the Services;
- 2.6.9. obtaining any necessary licences to use background music or titles;
- 2.6.10. creating and producing the Video; and
- 2.6.11. undertaking and overseeing all post-production titling, editing, scoring, dubbing, cutting and completion of the Video.

## 2.7. PRINT & MANUFACTURING

- 2.7.1. Print and manufactured items, where supplied, can only be rejected on the basis of either exceptionally poor quality or that they are different to a specification which has been signed off in writing.
- 2.7.2. All re-prints and re-orders must be ordered through TFA, not directly from the supplier, pursuant to clauses 1.5 and 1.6.
- 2.7.3. Due to issues that can occur with delivery companies, and which are outside of our control, goods cannot be rejected because they have arrived later than was expected or agreed, pursuant to the clause 1.12.

## 3. SUPPLYING GOODS AND SERVICES TO US

### 3.1. ORDER & PAYMENT PROCESS

- 3.1.1. An order is not valid unless accompanied by a valid purchase order that has been signed by a company director.
- 3.1.2. Orders are accepted by the Supplier at the price and specification stated on the order.
- 3.1.3. The Supplier accepts that the terms of our order are final and binding and that they supersede any of the Supplier's terms of business.
- 3.1.4. TFA reserves the right to cancel an order at any time, prior to completion of the order, or if the order is delivered late, and shall not be held liable for any costs or losses should TFA wish to cancel it.
- 3.1.5. TFA reserves the right to demand the supply of original creation assets used to provide the goods or service to Us (for example, printing plates, tooling, raw photography files and raw video content). If these are not supplied on request, TFA can make deductions from the sum agreed, refuse to pay for the work in its entirety and use what has been supplied, irrespective, if TFA is unable to cancel the order and find an alternative supplier in time.

- 3.1.6. Payment shall be made up to 60 days net from the date that goods are received, or a service is completed, unless otherwise agreed in writing.

### 3.2. CONFIDENTIALITY & COVENANTS

- 3.2.1. The Supplier agrees to keep all work for TFA and its client strictly confidential and ensure that this confidentiality is enforced. Any goods or services provided to TFA shall not be used for self-promotion under any circumstances without prior written consent from TFA.
- 3.2.2. The Supplier agrees to a covenant not to approach any staff directly in an attempt to solicit them for employment, private services or other such arrangements that could be detrimental to TFA.
- 3.2.3. The Supplier agrees to be held liable for any losses or damages TFA may incur arising from the Supplier's poor service or late delivery.

### 3.3. BREACH OF CONTRACT

- 3.3.1. In the event there is a breach to any of the clauses in section 3.2, the supplier agrees to the following penalties, all of which can be considered and applied without rendering any other penalty excluded:
- 3.3.2. A payment to TFA of £1,000 whereby a member of TFA's staff is approached by the supplier to provide private services.
- 3.3.3. Payment to TFA equivalent to 6 months' of an employee's salary where the employee has been employed or contracted to work for the supplier, directly or indirectly.
- 3.3.4. A full refund of any payments made for services or goods provided where they have been used for self-promotion, without written consent, plus further damages to be determined if any harm is caused to TFA's relationship with the client.
- 3.3.5. A payment to TFA equivalent to all gross profit made from a client, for the last 12 months, whereby the Supplier has solicited, or attempted to solicit, that client from TFA.
- 3.3.6. Where any of the above breaches occurs, all outstanding commitments TFA has to the Supplier, financial or otherwise, will be deemed void and TFA freed of all liabilities.