

SYND/CUT

SYNDICUT COMMUNICATIONS LTD

GENERAL CONDITIONS FOR THE SUPPLY OF SERVICES

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Services as set out in the Contract.

Client: the person who purchases Services from the Supplier.

Conditions: these general conditions as amended from time to time in accordance with clause 14.9.

Contract: any contract between the Supplier and the Client for the supply of the Services, incorporating these Conditions and any applicable Proposal.

Deliverables: any deliverables to be provided by the Supplier to the Client in the course of the Services.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Personnel: means any individual, who is an employee or contractor to the Supplier, performing the Services on behalf of the Supplier.

Services: the services, including any Deliverables, supplied by the Supplier to the Client as described in the Proposal or otherwise agreed between the parties.

Proposal: any Proposal defining the services to be provided by the Supplier to the Client and agreed between the parties.

Supplier: means **SYNDICUT COMMUNICATIONS LTD**, a company incorporated and registered in England and Wales with company number 04382669 whose registered office is at 6 Lombard Street, Abingdon, Oxfordshire, OX14 5BJ.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (d) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Contract constitutes the entire agreement between the parties in relation to its subject matter. However, the obligations of the parties under any pre-existing non-disclosure or confidentiality agreement shall remain in full force and effect in so far as there is no conflict between those arrangements and the Contract.

2.2 Any fee quotation is only valid for a period of three months from the date of the relevant Proposal, unless withdrawn earlier by the Supplier by written notice.

2.3 The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 In the event of any conflict between these Conditions and the provisions of any Proposal, the Proposal shall prevail.

3. SUPPLY OF SERVICES

3.1 The Supplier shall use reasonable endeavours to supply the Services to the Client in accordance with the Contract in all material respects.

3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. In particular, the Client acknowledges that the Client may be required to formally approve the Deliverables provided during a given phase of the Services in order for the Supplier to proceed to a subsequent phase.

3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

3.4 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

3.5 The Client acknowledges that where Deliverables have been approved by the Client, the Supplier shall be entitled to rely on the suitability of those Deliverables for the performance of the remainder of the Services and the Supplier shall have no liability for any defects in subsequent Services or Deliverables to the extent that such Services or Deliverables are derived from Deliverables approved by the Client.

3.6 Nothing in the Contract shall prevent the Supplier from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the term of the Contract provided that such activity does not cause a breach of any of the Supplier's obligations under the Contract. The Supplier does not work on an exclusive basis unless expressly agreed and supported by a retainer fee.

4. CLIENT'S OBLIGATIONS

4.1 The Client shall:

- (a) ensure that any information it provides in any order for Services is complete and accurate, and shall be responsible for ensuring that the Services are adequate for the Client's purposes;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (d) provide any facilities as are reasonably necessary for the performance of the Services;
- (e) ensure that any equipment and/or hardware belonging to or furnished by the Client is properly installed and is sufficient and suitable for the purpose of carrying out the Services and that any adjustments, which may be required in relation to the performance of the Services, are carried out;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start (including such licenses of third party software as are required for the performance of the Services).

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("**Client Default**"):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier or its agents or subcontractors arising directly or indirectly from the Client Default.

5. CHANGES TO THE SERVICES

5.1 If the Client requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Client of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the Supplier's Charges arising from the change;
- (c) the likely effect of the change on anticipated delivery dates; and

(d) any other impact of the change on the Contract.

5.2 If the Client wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to the Charges, the Services and any other relevant terms of the Contract to take account of the change and the Contract has been varied in accordance with clause 12.9.

6. INTRODUCTIONS AND SUBCONTRACTORS

6.1 The Supplier may introduce the Client to, or may engage with the Client's approval and at the Client's cost, third party suppliers of products or services related to the Services (such as manufacturers or printers). The Supplier warrants that will exercise reasonable skill and care in recommending or engaging such third parties but all other warranties in relation to such introductions or engagements are expressly excluded. Other than for breach of the warranty contained in this clause 6.1, the Supplier shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for any loss arising from the performance of such third parties.

7. CHARGES AND PAYMENT

7.1 Subject to clause 2.2, the Charges for the Services shall be as set out in the Contract. All Charges shall be payable in pounds sterling.

7.2 The Charges will be calculated on either:

- (a) a time and materials basis on actual Personnel utilisation using the rates set out in the applicable Proposal, or
- (b) fixed price.

7.3 Unless otherwise agreed by the parties, one half of the Charges due for each phase of work comprised in the Services shall be due upon commencement of that phase. Thereafter the Charges shall be invoiced to the Client monthly in arrears.

7.4 All reasonable expenses incurred by the Supplier in the course of providing the Services to the Client, including travel, travel time, accommodation, subsistence, daily allowances and other expenses incurred will be payable by the Client in addition to the Charges. Expenses shall be invoiced monthly in arrears. In particular:

- (a) car travel will be charged at the Supplier's standard mileage rate of 40 pence per mile
- (b) rail, air and other travel costs, including parking, taxis and subsistence will be recharged at cost plus a handling charge of 10%
- (c) in-house print production, copying and studio materials will be recharged in line with the Supplier's standard tariff, available upon request.

7.5 The Client shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- (c) time for payment shall be of the essence of the Contract.

7.6 All amounts payable by the Client under the Contract are, unless otherwise stated, exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

7.7 Without limiting any other right or remedy of the Supplier, if the Client fails to make any payment due to the Supplier under the Contract by the due date for payment ("**Due Date**"), the Supplier shall have the right to charge interest

on the overdue amount at the rate of four (4) per cent per annum above the then current Bank of England base lending rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

- 7.8 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services, including in all Deliverables, shall as between the parties be owned by the Supplier.

- 8.2 Unless otherwise set out in the Proposal, the Supplier grants to the Client a worldwide, non-exclusive, non-assignable licence (which shall not be capable of sub-licence) under its Intellectual Property Rights in the Deliverables to use the Deliverables for the Client's internal business purposes and/or the Client's own promotional purposes as anticipated by the Proposal (provided that where any Deliverables comprise, incorporate or are based or rely upon software which the Supplier makes commercially available, no licence to such software shall be granted under the Contract and the Client must take out a commercial licence of such software to the extent necessary to use the Deliverables). No other licence under the Supplier's Intellectual Property Rights in the Deliverables is granted under the Contract and any further licence will be subject to separate negotiation between the parties.

- 8.3 The Client acknowledges that, in respect of any third party Intellectual Property Rights comprised in the Deliverables, the Client's use of such Intellectual Property Rights is conditional upon the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Client and all such Intellectual Property Rights will remain the property of the originator.

- 8.4 A charge of 10% of the project value will be incurred if the Client requires a package of the website source code / print artwork files for use by another third party.

9. CONFIDENTIALITY

- 9.1 Each party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 9 shall survive termination of the Contract.

10. PUBLICITY

- 10.1 The Client shall:
- (a) permit the Supplier to announce its engagement by the Client in a form approved by the Client (approval not unreasonably to be withheld);
- (b) where the Services involve the provision of Deliverables for use by the Client in publicity and promotional material (including on the Client's website), credit the Supplier in such publicity and promotional material.
- 10.2 On completion of the Services the Client shall provide to the Supplier and, where appropriate, licence to the Supplier on a royalty-free basis, file copies of printed items and/or access to digital media, in each case derived from the Services, for use by the Supplier for client reference and promotional services.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.2 Subject to clause 11.1, the Supplier shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for any:
- (a) loss of profits;
- (b) loss of business;
- (c) loss of income or revenue;
- (d) depletion of goodwill or similar losses;
- (e) loss of anticipated savings;
- (f) loss of goods;
- (g) loss of use;
- (h) loss or corruption of data or information; or
- (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses,
- even if the Supplier has been advised of the possibility of such damages or losses.

- 11.3 Subject to clause 11.1, the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of the Charges actually paid by the Client to the Supplier in the twelve months preceding the date on which the event giving rise to such liability took place.

- 11.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12. TERMINATION

- 12.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if:
- (a) the Client commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of the Client being notified in writing of the breach;
- (b) the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of

- the Insolvency Act 1986; enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of the Client; is the subject of winding-up proceedings or the appointment of a receiver or administrator (or if a person becomes entitled to appoint a receiver or administrator over that party or its assets), or if any event with equivalent effect in any jurisdiction takes place with respect to the Client; or
- (c) the Client ceases to trade.

12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Client and the Supplier if the Client fails to pay any amount due under this Contract on the due date for payment or becomes subject to any of the events listed in clause 12.1(b) or 12.1(c), or the Supplier reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under the Contract on the due date.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Contract for any reason:

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied, work-in-progress or expenses incurred (or contractually committed to be incurred by the Supplier) for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return any Deliverables which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses 9, 10, 11, 13 and 14 of these Conditions shall survive termination of the Contract.

13.2 The Client acknowledges that the performance of the Services requires the dedicated allocation of resource by the Supplier which may result in loss of business opportunity and other losses to the Supplier. Accordingly, if this Contract is terminated by the Supplier under clause 12.1 or 12.2, then the Client shall pay to the Supplier whichever is the lesser of:

- (a) 20% of the sum of Charges quoted by the Supplier in the Proposal for the provision of the Services in their entirety; or
- (b) the sum of Charges quoted by the Supplier in the Proposal for the provision of the Services in their entirety less the sum of Charges paid by the Client as at the date of termination,
- and the Client acknowledges that such sum constitutes a genuine pre-estimate of the Supplier's loss.

14. GENERAL

14.1 **Force majeure:**

- (a) For the purposes of the Contract, "**Force Majeure Event**" means an event beyond the reasonable control of the Supplier including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of

God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, adverse weather conditions or default of suppliers or subcontractors.

- (b) The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than twelve (12) weeks, or from completing the Services within a period of twelve (12) weeks after their original due date for completion, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client.

14.2 **Assignment and subcontracting:**

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.3 **Non-Solicitation:** Each party agrees that it will not during the term of the Contract and for six(6) months after its termination directly or indirectly solicit or offer employment or engagement to any of the other party's employees who have been involved in the provision of the Services or the negotiation or management of the Contract.

14.4 **Notices:**

- (a) Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office within 48 hours (if a company) or (in any other case) its principal place of business, or sent by email
- (b) This clause 14.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under the Contract shall not be validly served if sent by e-mail.

14.5 **Waiver:**

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.6 **Severance:**

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.7 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute either

party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.8 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.9 **Variation:** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract or these Conditions, shall only be binding when agreed in writing and signed by both parties.

14.10 **Governing law and jurisdiction:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

15. DISPUTE RESOLUTION

15.0 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("Dispute") then, except as expressly provided in the Contract, the parties shall follow the dispute resolution procedure set out in this clause:

15.1 Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documentation. On service of the Dispute Notice the parties' respective nominated representatives shall attempt in good faith to resolve the Dispute;

15.2 If the parties' nominated representatives are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the parties' respective Chief Executive Officers who shall attempt in good faith to resolve it; and

15.3 If the parties' respective Chief Executive Officers are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, [either party shall be free to commence court proceedings in relation to the Dispute] [the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("ADR Notice") to the other party requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than thirty (30) days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.]

15.4 No party may commence any court proceedings in relation to any dispute arising out of this Agreement until thirty (30) days after [the parties' respective Chief Executive Officers have met to resolve the Dispute] [the appointment of a mediator], provided that the right to issue proceedings is not prejudiced by a delay.