



## WEBSERVICES TERMS AND CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The following words and phrases have the following meanings in these terms and conditions unless the context otherwise requires.

**Acceptance Date:** the date acceptance of the Website takes place, in accordance with Condition 5.3 or Condition 5.5, as the context requires.

**Acceptance Tests:** the mutually agreed tests in accordance with these Conditions to assess whether the Website conforms with the Specification, identified in the Order Form.

**Bribery Laws:** the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption.

**Business Day:** a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the City of London.

**Change:** any change, amendment or alteration to the Specification or the Project.

**Change Control Note:** a written note which details the impact the proposed Change will have on any part of the Specification or the Project, in such form as the parties agree.

**Change Control Procedure:** the procedure for agreeing Changes as set out in the Contract.

**Commencement Date:** the date on which the Contract comes into existence as provided for under Condition 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with Condition 2.5.

**Confidential Information:** any and all confidential information (whether in oral, written or electronic form) given including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and customer, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any associate, person, firm, or organisation associated with that party.

**Content:** all text, graphics, logos, photographs, images, moving images (including video), sound, illustrations, software, data, calculations, algorithms, methods, information and other material and related documentation featured, displayed or used in or in relation to the Website (including without limitation any Submissions) and any updates, upgrades, new versions or releases of any of the foregoing.

**Contract:** the contract between the Customer and Friday-Ad for the purchase and supply of the Services in accordance with these Conditions.

**Control:** as defined in section 1124 of the Corporation Tax Act 2010 and Controls and Controlled shall be interpreted accordingly.

**Customer:** the Customer identified in the Order Form, who promotes or advertises products or services to the public.

**Customer Content:** any Content provided or made available by the Customer.

**Fees:** the Set-Up Fee and Hosting Fees together with any other charges payable by the Customer to Friday-Ad relating to the provision of the Software and/or Services.

**Friday-Ad:** Friday-Ad Limited, a company registered in England and Wales under company number 2311783 and whose registered address is at London Road, Sayers Common, West Sussex, BN6 9HS.

**Friday-Ad Content:** any Content developed by Friday-Ad either before or during the Term that is included in the Website.



**Hosting Fees:** the fees payable by the Customer relating to the hosting of the Website and Software, which shall be, for the Initial Term, the amounts indicated in the Order Form.

**Initial Term:** as defined in Condition 3.

**Intellectual Property Rights:** any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, mask works, the right to sue for passing off, utility models, domain names and all similar rights and, in each case:

- a) whether registered or not;
- b) including any applications to protect or register such rights;
- c) including all renewals and extensions of such rights or applications;
- d) whether vested, contingent or future; and
- e) wherever existing.

**Order Form:** an order for Services submitted by the Customer to Friday-Ad as set out in the document headed Order Form.

**Project:** the project for the design and development of the Website for the Customer in accordance with the Specification together with training (if agreed in the Order Form), documentation, and such other goods and services as are required in the Specification.

**Project Completion:** the date when Friday-Ad estimates the Project is to be completed in accordance with the Specification.

**Renewal Term:** as defined in Condition 3.

**Replacement Supplier:** any person who provides services to the Customer of a similar nature to the Services (or any part of them) after and/or replacing Friday-Ad (and, if the context allows, may include the Customer itself).

**Service Credit:** where Friday-Ad has failed to attain the Service Level in a given month, that percentage, as is stated in the Order Form, of the Hosting Fees levied in respect of that month.

**Service Level:** the service levels, being the measure of website availability (excluding time for planned maintenance) in a month, as specified in the Order Form.

**Services:** the hosting services to be provided by Friday-Ad to the Customer pursuant to the Contract which are detailed in the Specification.

**Software:** any software and related documentation and any updates, upgrades, new versions or releases of the same that Friday-Ad agrees to supply under the Contract[, further details of which are set out in the Order Form.

**Specification:** the specification for the Website agreed between the parties and set out in the Order Form or as otherwise agreed by the parties in writing.

**Submissions:** any user or other third-party generated Content emailed or otherwise externally submitted to the Website.

**Term:** the term of the Contract as defined in Condition 3.

**Third Party Content:** any Content owned or licensed by a third party either before or during the Term, as detailed in the Specification.

**URL:** the address for the Website as identified in the Order Form.

**VAT:** United Kingdom value added tax and any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom.

**Visitor:** a visitor to the Website.

**Visitor Data:** all information provided by Visitors when visiting the Website.

**Website:** the website at the URL to be hosted by Friday-Ad pursuant to the Contract.



- 1.2 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.
- 1.3 A reference to writing or written includes email.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 Unless the context requires otherwise, words importing the singular shall include the plural and the same shall apply the other way round.

## **2. APPLICATION OF THESE CONDITIONS**

- 2.1 The Order Form constitutes an offer by the Customer to purchase the Services in accordance with these Conditions.
- 2.2 The Order Form shall only be deemed to be accepted upon Friday-Ad issuing a written acceptance of the Order Form (by way of order confirmation), at which point and on which date the Contract shall come into existence.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Any quotation given by Friday-Ad shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.5 Friday-Ad may amend these Conditions at any time by giving written notice to the Customer. Any Order Form placed by the Customer prior to the implementation of amendments shall be governed by the Conditions prevailing on the date of the Order Form.

## **3. DURATION**

The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with Condition 17, up to and including the first anniversary of the Acceptance Date (the Initial Term), and, thereafter, the Contract shall be automatically renewed for successive periods of 12 months (each a Renewal Term), unless: (a) either party notifies the other party of termination, in writing, at least one month before the end of the Initial Term or any Renewal Term in which case the Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or (b) otherwise terminated in accordance with the provisions of the Contract; and the Initial Term together with any subsequent Renewal Terms shall constitute the Term.

## **4. WEBSITE DEVELOPMENT PROJECT**

- 4.1 Friday-Ad shall commence the Project on the Commencement Date and shall undertake the Project in accordance with the Specification and subject to these Conditions.
- 4.2 Friday-Ad shall use reasonable endeavours to complete the Project on or before Project Completion.

## **5. ACCEPTANCE OF WEBSITE**

- 5.1 Once Friday-Ad has completed the Project in accordance with the Specification, Friday-Ad shall run the Acceptance Tests. The procedure set out in this Condition 5 shall be repeated in respect of any further development works agreed by the parties from time to time.
- 5.2 The Acceptance Tests shall test compliance of the Website with the Specification. The form of such tests shall be agreed by the parties acting in good faith and shall be sufficient to test whether or not the Website has the facilities specified in, and performs in accordance with the Specification or other agreed tests standards.
- 5.3 Acceptance of the Website shall occur when the Website has passed the Acceptance Tests. Friday-Ad shall notify the Customer when the Acceptance Tests have been passed and provide the results of the Acceptance Tests to the Customer in writing.
- 5.4 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom Friday-Ad has no responsibility (Non-Supplier Defect), the Website shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. Friday-Ad shall provide assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or



products. The Customer shall pay Friday-Ad in full for all such additional services and products at Friday-Ad's then current fees and prices.

- 5.5 Acceptance of the Website shall be deemed to have taken place upon the occurrence of any of the following events:
  - 5.5.1 the Customer uses any part of the Website for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
  - 5.5.2 the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of five (5) Business Days from the date on which Friday-Ad is ready to commence running such Acceptance Tests or retests; or
  - 5.5.3 in the circumstances set out in Condition 5.6.
- 5.6 If the Website is in "preview mode" and the Customer, without good reason which it has previously notified to Friday-Ad, delays the launch of the Website then the Customer shall be deemed to have accepted the Website on the Commencement Date.

## **6. SERVICES AND FRIDAY-AD'S OBLIGATIONS**

- 6.1 Friday-Ad shall undertake the Project and provide the Services:
  - 6.1.1 with reasonable skill and care; and
  - 6.1.2 at the times and materially in the manner required in the Specification and in accordance with these Conditions.
- 6.2 Except as otherwise expressly stated, time shall not be of essence in respect of the Services, under the Contract.
- 6.3 Friday-Ad shall use reasonable efforts to respond promptly from time to time to the Customer's reasonable requests for additional information or assistance with the aim of ensuring the successful completion of the Project.
- 6.4 The parties agree that Friday-Ad is being appointed as an exclusive supplier of the Services and the Customer may not at any time perform any part of the Services itself or procure them from a third party.
- 6.5 The Customer will have no entitlement to or interest in any internet protocol address allocated by Friday-Ad or in the URL during the Term or on termination of the Contract.
- 6.6 Friday-Ad shall be entitled at any time without notifying the Customer to make changes to the Services which are necessary to comply with any applicable security or other statutory requirements and shall determine the manner in which the Services are provided.
- 6.7 Friday-Ad shall use reasonable commercial efforts to maintain the availability of the Website 24 (twenty four) hours per day, 7 (seven) days per week in accordance with the Service Levels.

## **7. LICENSED SOFTWARE**

Friday-Ad grants the Customer a licence to use the Software in object code form, subject to the licence conditions set out in the Order Form.

## **8. CUSTOMER CONTENT AND THE CUSTOMER'S OBLIGATIONS**

- 8.1 The Customer shall:
  - 8.1.1 comply with its respective designated responsibilities specified in these Conditions;
  - 8.1.2 provide accurate and complete Customer Content to Friday-Ad at the time and in the format required by the Specification to enable Friday-Ad to develop the Website and to provide the Services; and
  - 8.1.3 respond promptly from time to time to the reasonable requests of Friday-Ad for relevant information, instructions and assistance, including reasonable access to and cooperation by the Customer's personnel, to ensure the successful completion of the Project.

- 8.2 Friday-Ad shall only use the Customer Content to enable it to host the Website and provide the Services in relation to the Website.
- 8.3 The Customer grants Friday-Ad a royalty-free, non-exclusive, non-transferable licence to use the Customer's Content in order to provide the Services but not otherwise.
- 8.4 The Customer undertakes and warrants to Friday-Ad that:
- 8.4.1 the use, reproduction and/or publication of the Customer Content by Friday-Ad as originally submitted or as amended pursuant to Condition 9 will not breach any contract or infringe or violate the Intellectual Property Rights or other personal or property rights of any person or render Friday-Ad liable to any proceedings whatsoever;
- 8.4.2 any information supplied by the Customer in connection with the provision of the Services is accurate, complete and true in all respects;
- 8.4.3 in respect of any Customer Content which contains the name or pictorial representation (photographic or otherwise) of any living person and/or any part of any living person and/or any copy by which any living person is or can be identified the Customer has obtained the authority of such living person to make use of such name, representation and/or copy;
- 8.4.4 the Customer Content complies with the requirements of all relevant laws, rules and regulations for the time being in force or which may be applicable in such jurisdiction as the Customer Content shall be made available;
- 8.4.5 the Customer Content is legal, decent, honest and truthful and complies with all relevant codes and laws as may be appropriate[ including (but not limited to) the UK Code of Non-Broadcast Advertising and Direct Promotional Marketing and all other relevant codes under the general supervision of the Advertising Standards Authority, or such other equivalent organisation];
- 8.4.6 in relation to any financial promotion, as defined under the Financial Services and Markets Act 2000 (the Act), the Customer has ensured that it is, and/or the Customer Content has been, approved by an authorised person within the meaning of the Act or the Customer Content is otherwise permitted under the Act, under the Financial Promotion Order 2001 under any other legislation subordinate to the Act;
- 8.4.7 the Customer Content shall not contain any data, image or other material which:
- a) is offensive, obscene or indecent, or is capable of being resolved into obscene or indecent images or material;
  - b) is defamatory, sexist, threatening or racially, ethnically or otherwise objectionable;
  - c) is designed or likely to cause annoyance, inconvenience, unwanted attention or needless anxiety to any other person;
  - d) is designed to or is likely to cause disruption to any computer system or to any network;
  - e) is illegal or is likely to induce an illegal act; and
  - f) it has authority to enter into and implement the Contract; and
- 8.4.8 the Customer Content does not contain viruses or other computer programs intended to damage, interfere with or unlawfully process personal or other data.
- 8.5 The Customer shall indemnify and keep indemnified, and hold harmless, Friday-Ad against all claims, losses damages, costs and expenses incurred by Friday-Ad arising out or in connection with:
- 8.5.1 any action, demand or claim that use or possession of any Customer Content infringes the Intellectual Property Rights of any third party; or
- 8.5.2 any breach by the Customer of the undertaking and warranties set out in Condition 8.4.
- 8.6 All Visitor Data and Submissions obtained by Friday-Ad in the course of providing the Services shall belong to the Customer and shall be provided by Friday-Ad to the Customer at the Customer's reasonable request and expense.
- 9. ACCEPTANCE AND USE OF CUSTOMER CONTENT**
- 9.1 All Customer Content shall be subject to Friday-Ad's approval. Friday-Ad does not undertake to review the contents of the Customer Content in detail and any such review and approval by Friday-Ad shall not be deemed to constitute an acceptance by



Friday-Ad that such Customer Content is provided in accordance with these Conditions nor will it constitute a waiver of Friday-Ad's rights under the Contract.

9.2 Friday-Ad:

9.2.1 shall, following its acceptance of the Customer Content, use it to perform the Services, in accordance with any requirements set out in the Specification, subject to the provisions of the Contract;

9.2.2 reserves the right at its sole discretion to decline to publish or to omit, suspend or change the position and/or contents of any Customer Content accepted by it;

9.2.3 may, without relaxing or reducing the Customer's warranties and obligations set out in Condition 8, refuse or require to be amended the Customer Content so as to comply with the legal or moral obligations placed upon Friday-Ad or to avoid infringing a third party's rights or any statutory or regulatory requirements; and

9.2.4 reserves the right at any time during the Term to remove the Customer Content from the Website if Friday-Ad reasonably considers the Customer Content breaches any applicable laws or the rights of any third party or is prejudicial to the interests of Friday-Ad and/or its business.

9.3 It is the responsibility of the Customer to check the accuracy of the Customer Content and, without affecting the provisions of Condition 14, Friday-Ad assumes no responsibility for the repetition of an error in the Customer Content.

9.4 Friday-Ad may include the statement "Designed and hosted by Friday-Ad" on the homepage of the Website in a form to be agreed.

**10. FRIDAY-AD'S WARRANTIES**

10.1 Friday-Ad warrants to the Customer that:

10.1.1 it has all rights and licences to provide the Friday-Ad Content and any Third Party Content (which it has been agreed in the Specification that Friday-Ad will license);

10.1.2 the Website (excluding any Customer Content or Third Party Content) does not:

- a) infringe the Intellectual Property Rights of any third party;
- b) contain Content which is fraudulent, defamatory, libellous, threatening or harassing, obscene, indecent or pornographic or otherwise contrary to law; and
- c) contain any viruses or other harmful or intrusive programs or other code; and

10.1.3 the Services do not and shall not infringe the Intellectual Property Rights of any third party.

10.2 All other warranties and representations as to the Website, whether statutory or implied, are hereby expressly excluded to the fullest extent permitted by law.

10.3 Any warranties given by Friday-Ad shall,

10.3.1 be subject to the Customer using the Website in compliance with these Conditions and any documentation supplied with them;

10.3.2 be subject to the Customer giving notice to Friday-Ad as soon as it is reasonably able upon becoming aware of the breach of a warranty. When notifying Friday-Ad of a breach the Customer shall use its reasonable endeavours to provide Friday-Ad with such documented information, details and assistance as Friday-Ad may reasonably request; and

10.3.3 with respect to the performance of the Website, not apply to the extent that the defect or error is wholly caused by any Customer Content or third-party software used in connection with the Website (save to the extent that Friday-Ad requested or required the use of such third-party software).

10.4 All Friday-Ad Content and Third Party Content shall remain the property of Friday-Ad or its licensors (as the case may be) and, subject to the Customer's compliance with these Conditions including payment of all Fees, Friday-Ad grants to the Customer a non-exclusive, non-transferrable, royalty-free licence (or sublicense, as the case may be) of such of Friday-Ad's Intellectual Property Rights in Friday-Ad Content and of such of the Third Party Content as are necessary for the Customer to fulfil its



obligations under the Contract and to enable the Customer to make use of the Website and the Services, which licence or sublicense:

- 10.4.1 in the case of Software, shall be a licence of object code only unless otherwise expressly provided;
- 10.4.2 in the case of Third Party Content, shall be on such terms as Friday-Ad may grant in accordance with the terms between Friday-Ad and the Third Party Content owner; and
- 10.4.3 shall be to the extent and for the purpose only of using and maintaining the Website.
- 10.5 Friday-Ad shall indemnify and keep indemnified, and hold harmless, the Customer against all claims, losses, damages, costs and expenses incurred by the Customer as a result of or in connection with any action, demand or claim that use or possession of the Website (excluding any Customer Content) infringes the Intellectual Property Rights of any third party.
- 10.6 Friday-Ad shall defend the Customer, its officers, directors and employees against any claim that the Services, Friday-Ad Content or Third Party Content infringes any United Kingdom Intellectual Property Rights, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
  - 10.6.1 Friday-Ad is given prompt notice of any such claim;
  - 10.6.2 the Customer provides reasonable co-operation to Friday-Ad in the defence and settlement of such claim, at Friday-Ad's expense; and
  - 10.6.3 Friday-Ad is given sole authority to defend or settle the claim.
- 10.7 In the defence or settlement of any claim, Friday-Ad may procure the right for the Customer to continue using the Services. Friday-Ad Content or Third Party Content, replace or modify the Services, Friday-Ad Content or Third Party Content so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.8 In no event shall Friday-Ad, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
  - 10.8.1 a modification of the Services, Friday-Ad Content or Third Party Content by anyone other than Friday-Ad; or
  - 10.8.2 the Customer's use of the Services, Friday-Ad Content or Third Party Content in a manner contrary to the instructions given to the Customer by Friday-Ad; or
  - 10.8.3 the Customer's use of the Services, Friday-Ad Content or Third Party Content after notice of the alleged or actual infringement from Friday-Ad or any appropriate authority.
- 10.9 The foregoing and Condition 14.5 state the Customer's sole and exclusive rights and remedies, and Friday-Ad's (including Friday-Ad's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights.

## **11. SERVICE LEVELS**

- 11.1 Friday-Ad warrants that the Website shall with effect from the Acceptance Date and for the Term be available to visitors for the Service Level. Where the Website is not available for the Service Level in any given month, and provided this is due to a default of Friday-Ad and not an agreed scheduled or emergency maintenance, the Customer will be credited with an amount equal to the Service Credit. Friday-Ad shall make all commercially reasonable efforts to provide the Customer with prior email notification of all scheduled and emergency interruptions to the availability of the Website and shall use reasonable endeavours to keep such interruptions to a minimum.
- 11.2 Friday-Ad shall make available to the Customer, electronically, monthly reports in relation to Service Level performance.

## **12. FAILURE TO ACHIEVE SERVICE LEVELS**

- 12.1 Failure to comply with the Service Levels shall entitle the Customer to Service Credits in accordance with Condition 11.1, aggregated at the end of the applicable Initial Term or Renewal Term, and which will be credited against the Hosting Fees



payable for the next Renewal Term or, if the Contract is to terminate at the end of the applicable Initial Term or Renewal Term, paid to the Customer.

12.2 Service Credits under Condition 11 shall be the Customer's sole and exclusive remedy in respect of such failure.

12.3 Friday-Ad shall not be liable to pay Service Credits pursuant to this Condition 12 to the extent that such liability arose by reason of any delay or default of Customer in the performance of its obligations under the Contract.

### **13. FEES AND PAYMENT**

13.1 The Customer shall pay the Fees to Friday-Ad for the Project and Services in accordance with this Condition 13 and the Order Form.

13.2 If the parties agree (in the Order Form) that the Customer is to be billed on an annual basis, the Customer shall on the Commencement Date provide to Friday-Ad valid, up-to-date and complete credit card details or approved purchase order information acceptable to Friday-Ad and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

13.2.1 its credit card details to Friday-Ad, the Customer authorises Friday-Ad to bill such credit card:

- a) on the Commencement Date for the Set-Up Fee;
- b) on the Acceptance Date for the Hosting Fees payable in respect of the Initial Term; and
- c) subject to Condition 3, on each anniversary of the Acceptance Date for the Hosting Fees payable in respect of the next Renewal Term;

13.2.2 its approved purchase order information to Friday-Ad, Friday-Ad shall invoice the Customer:

- a) on the Commencement Date for the Set-Up Fee;
- b) on the Acceptance Date for the Hosting Fees payable in respect of the Initial Term; and
- c) subject to Condition 3, on each anniversary of the Acceptance Date for the Fees payable in respect of the next Renewal Term,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

13.3 If the parties agree (in the Order Form) that the Customer is to be billed on a monthly basis, Friday-Ad shall invoice the Customer:

- a) on the Commencement Date for the Set-Up Fee;
- b) on the Acceptance Date for the Hosting Fees payable in respect of the forthcoming month;
- c) at the beginning of each month thereafter, the Hosting Fees payable for the forthcoming month,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

13.4 If Friday-Ad has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Friday-Ad:

13.4.1 Friday-Ad may, without liability to the Customer, disable the availability of the Customer Content and Friday-Ad shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

13.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

13.5 The Customer shall additionally pay all expenses Friday-Ad may incur in collecting arrears on overdue payments whether or not proceedings have been taken and regardless of the outcome of such proceedings.

13.6 All amounts and fees stated or referred to in these Conditions:

13.6.1 shall be payable in pounds sterling;

13.6.2 are, subject to Condition 17.2.1 and Condition 17.2.2, non-cancellable and non-refundable;





- 13.6.3 are exclusive of value added tax, which shall be added to Friday-Ad's invoice(s) at the appropriate rate.
- 13.7 Friday-Ad shall be entitled to increase the Hosting Fees at any time during the Term on giving 1 (one) month's prior written notice to the Customer and the Order Form shall be deemed to have been amended accordingly.
- 13.8 Additional fees may be charged by Friday-Ad for delivery of additional value added services such as tracker and trafficking fees and shall be agreed between the parties in writing.
- 13.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

#### **14. LIABILITY**

- 14.1 Nothing in the Contract shall limit or exclude either party'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) any other liability which cannot be limited or excluded by applicable law.
- 14.2 Subject to Condition 14.1, Friday-Ad shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for: (a) loss of profits; (b) loss of sales or business; (c) loss of agreements or contracts; (d) loss of anticipated savings; (e) loss of use or corruption of software, data or information; (f) loss of damage to goodwill; and (g) any indirect or consequential loss.
- 14.3 If Friday-Ad provides any estimates or targets relating to:
  - 14.3.1 the number, proportion or type of online users likely to be exposed to the Website; and/or
  - 14.3.2 the number of exposures each such online user is likely to receive,the Customer acknowledges and agrees that such estimates or targets are ultimately beyond Friday-Ad's control and, accordingly, Friday-Ad shall not be liable for any costs or losses incurred by the Customer or by any third party as a result of the Customer's reliance on such estimates and targets. Friday-Ad does not, under any circumstance, provide a guarantee to the Customer that its provision of the Services will result in such estimates or targets being achieved.
- 14.4 Friday-Ad will not be liable for any loss of Customer Content which the Customer supplies to it and the Customer shall be responsible for retaining in its possession sufficient copy of Customer Content for whatever purposes it may require.
- 14.5 Subject to Conditions 14.1 to 14.4 inclusive, Friday-Ad's total liability (whether in contract, tort or otherwise) under or in connection with the Contract or based on any claim for indemnity or contribution shall be limited to 100% of the Fees (excluding any VAT, duty, sales or similar taxes) payable by the Customer to Friday-Ad under the Contract in that calendar year.
- 14.6 This Condition 14 shall survive termination or expiry of the Contract.

#### **15. CONFIDENTIAL INFORMATION**

- 15.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under the Contract.
- 15.2 Each party undertakes to:
  - 15.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors (including Friday-Ad personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under the Contract; and
  - 15.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this Condition 15.
- 15.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 15.4 The provisions of this Condition 15 shall not apply to information which:
  - 15.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;



- 15.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
- 15.4.3 is independently developed by the recipient, without access to or use of such information; or
- 15.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 15.5 The obligations under this Condition 15 shall survive the variation, expiry or termination of the Contract for a period of five years thereafter.

## **16. ANTI-BRIBERY**

- 16.1 Each party shall comply with applicable Bribery Laws and each shall use all reasonable endeavours to ensure that:
  - 16.1.1 all of that party's personnel;
  - 16.1.2 all of that party's subcontractors; and
  - 16.1.3 all others associated with that party,
  - 16.1.4 involved in performing services for or on behalf of that party or otherwise involved with the Contract so comply.
- 16.2 Without limitation to Condition 16.1:
  - 16.2.1 neither party shall (directly or indirectly) offer or give or request, agree to receive or accept any bribe, other improper payment or advantage or bribe any UK or foreign public official in breach of applicable Bribery Laws; and
  - 16.2.2 each party shall implement, maintain and enforce adequate procedures designed to prevent persons associated with that party engaging in conduct which contravenes the Bribery Act 2010.
- 16.3 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in Conditions 16.1 to 16.2 inclusive.
- 16.4 The expressions adequate procedures, associated with and foreign public official shall be construed in accordance with the Bribery Act 2010.

## **17. TERMINATION**

- 17.1 Either party may without prejudice to its other rights and remedies by notice in writing to the other party immediately terminate the Contract if the other:
  - 17.1.1 is in material or persistent breach of any of its obligations under the Contract and if that breach is capable of remedy and the other has failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
  - 17.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction; or
  - 17.1.3 ceases or threatens to cease carrying on business in the United Kingdom.
- 17.2 The Customer may terminate the Contract without cause in the following circumstances:
  - 17.2.1 by giving written notice to Friday-Ad at any time during the Initial Term and, in which case,
    - a) if the Customer is billed on annual basis, Friday-Ad shall within 30 days of termination refund the Customer an amount equal to 5% (five per cent) of the Hosting Fees attributable to and paid in respect of that part of the Initial Term which the Customer has terminated; and
    - b) if the Customer is billed on monthly basis, Friday-Ad shall invoice the Customer for, and the Customer shall pay, an amount equal to 95% (ninety-five per cent) of the Hosting Fees that would have otherwise been payable for the Initial Term;



- 17.2.2 following expiry of the Initial Term, by giving one month's written notice to Friday-Ad and, in which case, Friday-Ad shall, within 30 days of termination, refund the Customer that proportion of the Hosting Fees paid which relate to the remainder of the relevant Renewal Period had it not terminated less an administration fee equal to 20% of that amount; or
- 17.2.3 by giving written notice to Friday-Ad within one month of service of notice of a Hosting Fees increase.
- 17.3 In the event of termination of the Contract for any reason, each party shall:
  - 17.3.1 within seven days of such termination return (or, at the other party's option, destroy) all the other party's Confidential Information in its possession or under its control and all copies of such information; and
  - 17.3.2 perform their respective obligations with respect to exit management as set out in these Conditions.

## **18. EXIT MANAGEMENT**

- 18.1 If the Contract expires or is terminated in whole or in part for any reason Friday-Ad shall, subject to payment of reasonable fees, provide all reasonable assistance to Customer to ensure the orderly migration of the Services, the Website and/or the Services to the Customer or, at the Customer's request, a Replacement Supplier. The remaining provisions of this Condition 18 shall not prejudice or restrict the generality of this obligation.
- 18.2 Immediately on termination of the Contract, Friday-Ad shall return to Customer or as directed by the Customer, the Website, and all Customer Content together with all other materials and assets and other information provided to Friday-Ad by the Customer or by users of the Website, including for the avoidance of doubt all Visitor Information and Submissions. Friday-Ad shall not be obliged to supply to the Customer any Software at termination or expiry of the Contract and any licence of such Software shall not continue following termination or expiry of the Contract, except as expressly agreed.
- 18.3 Friday-Ad shall (if requested by the Customer to do so and at Customer's reasonable cost and expense at the then current rate of Friday-Ad) continue to provide the Services and a domain name server for a period of [30] days following the date of expiry or termination of the Contract.

## **19. DATA PROTECTION**

- 19.1 In this Condition 19, the following words shall bear the meanings given in this Condition 19.1:

Applicable Laws: for so long as and to the extent that they apply to Friday-Ad the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law.

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

Domestic UK law: the UK Data Protection Legislation and any other law that applies in the UK.

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

- 19.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 19 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 19.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Friday-Ad is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). The Customer shall set out in writing the scope, nature and purpose of processing by Friday-Ad, the duration of the processing and the types of Personal Data and categories of Data Subject, as both such terms are defined in the Data Protection Legislation.
- 19.4 Without prejudice to the generality of Condition 19.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Friday-Ad for the duration and purposes of the Contract.
- 19.5 Without prejudice to the generality of Condition 19.2, Friday-Ad shall, in relation to any Personal Data processed in connection with the performance by Friday-Ad of its obligations under the Contract:



- a) process that Personal Data only on the written instructions of the Customer unless Friday-Ad is required by Applicable Laws to otherwise process that Personal Data. Where Friday-Ad is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Friday-Ad shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Friday-Ad from so notifying the Customer;
  - b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - I. the Customer or Friday-Ad has provided appropriate safeguards in relation to the transfer;
    - II. the Data Subjects have enforceable rights and effective legal remedies;
    - III. Friday-Ad complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - IV. Friday-Ad complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
  - g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data; and
  - h) maintain complete and accurate records and information to demonstrate its compliance with this Condition 19.
- 19.6 The Customer consents to Friday-Ad appointing third parties to process Personal Data under the Contract providing Friday-Ad and the relevant third party entering into a written agreement incorporating terms which are substantially similar to those set out in this Condition 19. As between the Customer and Friday-Ad, Friday-Ad shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Condition 19.
- 19.7 Either party may, at any time on not less than 30 days' notice, revise this Condition 19 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 20. CHANGE CONTROL**
- 20.1 All Changes to the Specification shall take place in accordance with the following Change Control Procedure. Either party may submit at any time a request for Change to the other party.
- 20.2 Where Friday-Ad originates a Change, it shall provide the Customer with a Change Control Note.
- 20.3 Where the Customer originates a proposed Change, it shall provide Friday-Ad with such information (as is within the Customer's reasonable possession or control) which Friday-Ad reasonably considers is relevant to such Change or may assist Friday-Ad in the preparation of a Change Control Note. Friday-Ad will provide the Customer within 14 days of receiving the request for a Change (or such other period as may be agreed between the parties) with a Change Control Note.
- 20.4 The Customer shall, within 14 days of receipt of the Change Control Note (or such later time as may be agreed) indicate acceptance of the change, or set out its reasons for declining.
- 20.5 Each Change Control Note shall include the costs of implementing a Change, relevant deliverables or allocation of resources associated with the Change (if any) and the estimated timescales for implementation of the Change.
- 20.6 The parties shall have no obligations in respect of a Change Control Note unless they expressly agree to do so by them both executing the Change Control Note or otherwise agree to do so in writing.



## **21. UNFORESEEN EVENTS**

- 21.1 An Unforeseen Event means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, ceasing to be entitled to access the internet for whatever reason, server crashes, deletion, corruption, loss or removal of data, transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.
- 21.2 If a party is wholly or partially prevented from carrying out its obligations under the Contract (excluding the Customer's obligations to pay the Fees or other charges) by the occurrence of an Unforeseen Event, then that party's obligation to perform in accordance with this Contract will be suspended for the duration of the Unforeseen Event.
- 21.3 As soon as practicable after the Unforeseen Event arises, the party affected by the Unforeseen Event must notify the other party of the extent to which the notifying party is unable to perform its obligations under the Contract.

## **22. COMPLIANCE WITH LAW**

Each party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties under the Contract, its employees, agents and representatives will comply with all applicable laws and regulations, provided that neither party shall be liable for any breach to the extent that such breach is directly caused or contributed to by any act or default of the other party or its employees, agents and representatives.

## **23. NOTICES**

- 23.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this Condition 23.1, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, commercial courier, or email.
- 23.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 23.1; if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day from its date of issue after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, the next Business Day after transmission.

## **24. GENERAL**

- 24.1 No one other than a party to the Contract shall have any right to enforce any of its terms.
- 24.2 If any court or 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 to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 24.3 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract. Nothing in this Condition shall limit or exclude any liability for fraud.
- 24.4 The Customer shall not assign the Contract or any part of it to any person, firm or company without Friday-Ad's prior written consent.
- 24.5 Failure or delay by a party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights under the Contract. Any waiver by a party shall not be deemed a waiver of any subsequent breach.
- 24.6 Dispute Resolution. Any dispute to be resolved pursuant to the Contract shall first be submitted for resolution to the directors (or persons of comparable authority) of each party for resolution. If such directors are unable to resolve the dispute within 10 days (or such longer time as is mutually agreed in writing), then each party shall be free to pursue whatever remedies under the Contract, at law or in equity may be available to it in respect of the subject matter of the dispute.



24.7 Governing Law and Jurisdiction. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Friday-Ad Limited

8 June 2018