

# Master Terms & Conditions 2019



# Master Terms and Conditions

*The Client's attention is drawn in particular to clause 14.*

## APPLICATION

1.1 These Terms and Conditions ("Master Terms and Conditions") shall apply to the provision of Services (as defined below) by Footprint Digital (as defined below) to the Client (as defined below).

1.2 If there is any conflict or ambiguity between these Master Terms and Conditions and the Schedule of Work (as defined below), the Schedule of Work (as defined below) shall take precedence.

## DEFINITIONS AND INTERPRETATION

2.1 In these Master Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Analytics" means services including, but not limited to, strategy, reporting, insights, analysis, tracking and recommendations;

"Agreement" means these Master Terms and Conditions and any Schedule of Work;

"Business Day" means a day (excluding Saturdays) on which banks in London are open for the transaction of normal banking business;

"Client" means any individual, firm or corporate body (which expression shall, where the context so admits, include its successors and assigns) which purchases Services from Footprint Digital and whose details appear on any Schedule of Work;

"Confidential Information" means any and all information acquired by either party about the other party's business and/or given by one party to the other party and/or generated by either party from the other party's Confidential Information in the course of fulfilling their obligations under the Agreement. Footprint Digital's Confidential Information includes, but is not limited to, any confidential information of Third Party Suppliers;

"Content" means content for online or offline purposes including, but not limited to, static articles, reports, infographics, landing pages, interactive games and videos;

"Credit Limit" means the monetary sum specified as such in a Schedule of Work;

"CRO" means conversion rate optimisation and/or personalisation, which is the task of improving the conversion of traffic to an agreed on-site action for specific pages and/or personalise experiences for individual clients or client clusters;

"Data Protection Legislation" means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in



force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communication);

“Deposit” means any deposit set out in the Schedule of Work;

“Display” means visual advertising, payable on a CPC (cost per click), CPM (cost per impression / cost per number of impressions) or fixed fee model;

“Downtime” means any and all time when the Website is not operational;

“EPC” means earnings per click, an industry metric;

“Execution Date” means the date of the Agreement which is stated in the Schedule of Work;

“Extended Term” means the period specified in the Schedule of Work, beginning at the end of the Initial Term, and at the end of each Extended Term, as the case may be;

“Fees” means the fees and charges payable by the Client under clause 5 and payable in accordance with clause 6 and in accordance with the Schedule of Work (Including but not limited to the Terms of Payment);

“Field of Use” as defined in the Schedule of Work;

“Footprint Digital” means Footprint Digital Limited, 1-3 Head Street, Colchester, C01 1NX Registered Company Number 07686793, trading as “Footprint Digital”; and

“Group” means, in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;

“holding company and subsidiary” mean a “holding company” and “subsidiary” as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members’ rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;

“Implementation Services” the work which Footprint Digital needs to perform before it is able to commence the provision of the Services;

“Initial Term” means the period specified in the Schedule of Work, beginning on the Live Date;

“Schedule of Work” means the document headed “Schedule of Work” and signed by both Footprint Digital and the Client, setting out (amongst other things) the Services to be provided by Footprint Digital and other details concerning the relationship between Footprint Digital and the Client and which forms part of the Agreement;



“Intellectual Property Rights or IPR” means all patents, rights to inventions, utility models, know-how, copyright and related rights, trademarks, 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;

“Invoice Period” means the period within which payment of a particular invoice must be made, as set out in the Schedule of Work;

“Keyword” means a term or a word used to identify content in websites and which allows a search engine to index those websites and to rank those websites in decreasing relevance or popularity;

“Liability” means actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), demands, expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities;

“Live Date” means the date upon which the Services will commence as set out in the Schedule of Work, or, if estimated, as notified to the Client;

“Management Fee” means the fee model for Services where the basis for charging is a monthly fee set out in the Schedule of Work;

“Paid Media” means any or all paid advertising services including PPC, Paid Social, Display or Retargeting;

“Paid Social” means advertising on social media Traffic Providers including, but not limited to, Facebook, Instagram, Twitter and Pinterest;

“Parties” means Footprint Digital and the Client collectively, and each a “Party”;

“PPC” means pay per click advertising model, where payment is made for clicks on search Traffic Providers including, but not limited to, Google, Bing, Yandex and Baidu;

“Privacy Policy” means the data protection and security policy as may be requested from Footprint Digital and which is available online on Footprint Digital’s website under the link “Privacy Policy”;

“Retargeting” means targeted advertising by which online advertising is targeted to consumers based on their previous actions. Retargeting may include, but not limited to PPC, Paid Social or Display advertising.

“SEO” means Search Engine Optimisation, which is the task of improving a webpage or website’s ranking or visibility on the Traffic Providers;

“Social” means services to support strategy, planning and activity on social media platforms including, but not limited to, Facebook, Twitter, Instagram and Pinterest;

“Services” means the services to be provided by Footprint Digital to the Client as set out in the Services Schedule;



“Services Schedule” means the schedule setting out the details of the Services in the Schedule of Work;

“Terms of Payment” means the terms of payment as set out in the Schedule of Work;

“System” means the combination of the Third-Party Suppliers’ hardware and software;

“Third-Party Supplier” means a third-party supplier that provides or enables any part of the Services, as set out in the Schedule of Work;

“Third Party User Agreement” means any terms and conditions of any Third-Party Supplier applying to the Client as set out on the Third-Party Supplier’s Website, as notified by Footprint Digital to the Client;

“Tracking” means the analysis of visitor behaviour and the tracking of visitors to websites or Traffic Providers;

“Tracking Downtime” means any period when the Tracking Provider services are not operational on the Website;

“Tracking Provider” means the platform or tool used to track all Services activity. Tracking Providers include, but are not limited to, Google Analytics, Rakuten and Doubleclick;

“Traffic Levels” means the number of visitors to the Website;

“Traffic Providers” means internet search providers and content, traffic and other providers including, but not limited to, Google, BING, Yandex, Baidu and Facebook;

“UK Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

“VAT” means value added tax chargeable under English law for the time being and any similar additional tax;

“Website” means the Client’s website or websites as set out in the Schedule of Work, and which shall include all sub-domains, lower level domains of the Website URL and variants;

2.2 Unless the context otherwise requires, each reference in these Master Terms and Conditions to:

2.2.1 “writing”, and any similar expression, includes a reference to any communication effected by email but not by fax;

2.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;



2.2.3 a Clause or paragraph is a reference to a Clause or paragraph of these Master Terms and Conditions;

2.3 The headings used in these Master Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Master Terms and Conditions.

2.4 Words imparting the singular number shall include the plural and vice versa.

2.5 References to any gender shall include the other gender.

## SERVICES

3.1 The Client hereby appoints Footprint Digital as its exclusive provider of the Services and Footprint Digital hereby accepts the appointment on the terms and conditions of these Master Terms and Conditions and any terms and conditions set out in the Schedule of Work. These Master Terms and Conditions apply to the Agreement 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.

3.2 With effect from the Live Date Footprint Digital shall, in consideration of the Fees being paid in accordance with the Agreement (which includes for the avoidance of doubt the Schedule of Work, Terms of Payment and these Master Terms and Conditions), provide the Services to the Client.

3.3 Details of the Services will be as set out in the Services Schedule to the relevant Schedule of Work.

3.4 In the event that Footprint Digital is required to perform Implementation Services, the Live Date may be estimated at the Execution Date. Footprint Digital will provide a Live Date to the Client at the earliest possible occasion during the provision of the Implementation Services.

3.5 Footprint Digital will use reasonable care and skill to perform the Services.

3.6 Footprint Digital shall use reasonable endeavours to complete its obligations under the Agreement, but time will not be of the essence in the performance of these obligations.

3.7 Footprint Digital 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 Footprint Digital shall notify the Client in any such event.

3.8 Footprint Digital shall, if indicated in the Schedule of Work, provide Reports to the Client at the frequency and in the format specified in the Services Schedule.

### 3.9 Tracking

3.9.1 For all Services requiring Tracking, all actions, clicks or sales will be tracked by the Tracking Provider(s). The reports generated from the Tracking Provider(s) will be used for all reporting calculations to the Client.

3.9.4 Given the nature of tracking technology, in the event that there is a problem with the Tracking Provider, such as, for example, if Tracking is inaccurate due to the Client's activity or



inactivity (such as removal of the Tracking pixel from the Website), then the Parties agree this will be taken into consideration for any performance reviews, particularly around service performance where targets have been agreed between Footprint Digital and the Client. Footprint Digital shall not be liable to the Client or be deemed to be in breach of the Agreement if Tracking data or information is inaccurate or incorrect due to any act or omission of the Client (including but not limited to the Client removing the Tracking pixel from the Website). In addition, Footprint Digital shall not be liable to the Client or be deemed to be in breach of the Agreement if incorrect or inaccurate Tracking data or information is received, obtained or otherwise by Footprint Digital from a 3<sup>rd</sup> party (including but not limited to Google Analytics, Google Ads, Google Data Studio, Google Search Console, Facebook, Bing Ads, Whoop!, Agency Analytics, SEM Rush, Majestic and Shopify) and used as part of the Services. Nothing in this clause shall be deemed to exclude or limit liability where it would be unlawful to do so.

## CLIENT OBLIGATIONS

4.1 The Client shall:

4.1.1 co-operate with Footprint Digital in all matters relating to the Services;

4.1.2 provide, in a timely manner, such in-put material and other information as Footprint Digital may require, and ensure that it is accurate in all material respects;

4.1.3 ensure that any third party previously providing services that relate or are similar to the Services shall fully co-operate with Footprint Digital and, in particular, at all times shall hand over all relevant materials which are in its possession or provide all relevant information reasonably requested by Footprint Digital.

4.2 The Client shall not, during the continuance of the Agreement and unless otherwise agreed by Footprint Digital and set out in the Schedule of Work, provide or procure services that have a material impact on the provision of Services by Footprint Digital.

4.3 The Client covenants that:

4.3.1 it will comply with any applicable Third Party User Agreement as if it were incorporated into the Agreement. If there is any conflict between these Master Terms and Conditions and the terms of the Third Party User Agreement, then these Master Terms and Conditions shall prevail;

4.3.2 ownership, proprietary rights and all Intellectual Property Rights in all software supplied to the Client or otherwise available to the Client shall remain the property of Footprint Digital or its licensors. The Client agrees to comply with the terms of any agreement reasonably required by the owner of Intellectual Property Rights in all software supplied to or used by the Client for the protection of that software;

4.3.3 to the best of its knowledge, information and belief, all information supplied to Footprint Digital in relation to the supply of the Services will be accurate and in accordance with all laws, and does not violate any third-party rights, including any third party Intellectual Property Rights and that it shall indemnify Footprint Digital against all damages, losses and expenses arising as a result of any action or claim in this regard;



4.3.4 it shall provide at least 24 hours' written notice to Footprint Digital of any changes to the Website that are likely to affect the Services;

4.3.5 it shall provide reasonable notice to Footprint Digital of any changes likely to impact on the delivery of the Services by Footprint Digital;

4.3.6 it shall maintain a backup of the Website, any underlying code, and all materials, information and Intellectual Property Rights owned by it that are passed to Footprint Digital under the Agreement;

4.3.7 where Footprint Digital is providing Services that require Tracking, from the Live Date:

4.3.7.1 the Tracking Provider pixel will be placed on the Website correctly at all times;

4.3.7.3 the Tracking Provider pixel will not be removed from the Website (or any of them) until termination or expiry of the Agreement;

4.3.7.4 it will notify Footprint Digital if they suffer any Tracking Provider downtime and that it will use best endeavours to ensure that it is fully operational again within one (1) hour of when the Tracking Provider pixel first became non-operational;

4.3.7.5 it will notify Footprint Digital if the Website (or any of them) suffers any Downtime and that it will use best endeavours to ensure that it is fully operational again within two (2) hours of such Downtime commencing; and

4.3.8 it shall obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

4.4 Any Downtime or Tracking Downtime shall not be included in any calculations of Footprint Digital's compliance with any agreed KPIs or service level metrics set out in the Services Schedule, if the inclusion of the Downtime and Tracking Downtime would adversely affect Footprint Digital's level of compliance with the agreed KPIs or service level metrics. Footprint Digital's entitlement to fees for Services shall not be adversely affected by any Downtime or Tracking Downtime.

## FEES

5.1 The Client agrees to pay the Fees in accordance with these Master Terms and Conditions and the Schedule of Work (including but not limited to the Terms of Payment).

5.2 All amounts payable by the Client under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Agreement by Footprint Digital to the Client, the Client shall, on receipt of a valid VAT invoice from Footprint Digital, pay to Footprint Digital 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.





## INVOICING AND PAYMENT

6.1 Footprint Digital will invoice the Client at the Invoice Interval set out in the Schedule of Work. Where the Client is subject to a Credit Limit, Footprint Digital will invoice the Client each and every time the value of the unpaid Fees for the Services reaches the Credit Limit.

6.2 All payments required to be made pursuant to the Agreement by either Party shall be made within the Invoice Period for the relevant invoice in full and cleared funds to such bank as the receiving Party may from time to time nominate, without any set-off, counterclaim, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.

6.3 The time of payment shall be of the essence for the Client. If the Client fails to make any payment on the due date then Footprint Digital:

6.3.1 without prejudice to any right which Footprint Digital may have pursuant to any statutory provision in force from time to time, Footprint Digital have and reserve the right to charge the Client interest on a daily basis at an annual rate equal to the aggregate of 4% and the base rate of Natwest Bank PLC from time to time on any sum due and not paid on its due date. Such interest shall be calculated cumulatively on a daily basis and shall run from day to day and accrue after as well as before any judgement; and

6.3.2 may withhold or suspend future or current performance of the Services and performance under the Agreement any other agreement with the Client.

## CONFIDENTIALITY

7.1 Each party undertakes that it shall not at any time during the Agreement, and for a period of five years after termination of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 7.2.

7.2 Each party may disclose the other party's confidential information:

7.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 7; and

7.2.2 as may be required by law, court order or any governmental or regulatory authority.

7.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Agreement.



## DATA OWNERSHIP AND PROTECTION

8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 8, Applicable Laws means (for so long as and to the extent that they apply to Footprint Digital) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the Data Protection Legislation from time to time in force in the UK and any other law that applies in the UK.

8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and Footprint Digital is the processor.

8.3 Without prejudice to the generality of clause 8.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Footprint Digital for the duration and purposes of the Agreement.

8.4 Without prejudice to the generality of clause 8.1, Footprint Digital shall, in relation to any personal data processed in connection with the performance by Footprint Digital of its obligations under the Agreement:

8.4.1 process that personal data only for purposes connected to the performance of the obligations contained in the Agreement, including but not limited to the purpose of providing the Services, unless Footprint Digital is required by Applicable Laws to otherwise process that personal data. Where Footprint Digital is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Footprint Digital shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Footprint Digital from so notifying the Client;

8.4.2 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

8.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

8.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

(a) the Client or Footprint Digital has provided appropriate safeguards in relation to the transfer;

(b) the data subject has enforceable rights and effective legal remedies;



(c) Footprint Digital complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(d) Footprint Digital complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;

8.4.5 assist the Client, at the Client'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;

8.4.6 notify the Client without undue delay on becoming aware of a personal data breach;

8.4.7 at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the personal data; and

8.4.8 maintain records and information to demonstrate its compliance with this clause 8 and immediately inform the Client if, in the opinion of Footprint Digital, an instruction infringes the Data Protection Legislation.

8.4.9 The Client consents to Footprint Digital appointing those third party processors named or referred to in Footprint Digital's Privacy Policy as a third party processor of Personal Data under the Agreement. Footprint Digital confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 8 and in either case which Footprint Digital confirms will continue to reflect the requirements of the Data Protection Legislation. As between the Client and Footprint Digital, Footprint Digital shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 8.

## INTELLECTUAL PROPERTY RIGHTS

9.1 Unless otherwise indicated, the Client is the sole and exclusive owner of all Intellectual Property Rights in the Website.

9.2 The Client hereby grants to Footprint Digital a fully paid up, non-exclusive, non-transferrable, royalty free licence to use its Intellectual Property Rights within the Field of Use. The Client, in addition, grants Footprint Digital a fully paid up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Footprint Digital for the term of the Agreement for the purpose of providing the Services to the Client.

9.3 Without prejudice to the generality of clause 9.2, the Client hereby grants to Footprint Digital a non-exclusive, non-transferrable, royalty free licence to use its trade marks ("**Trade Marks**") within the Field of Use.

9.4 In the event that Footprint Digital wishes to use the Trade Marks of the Client for any purposes outside the Field of Use, it must not do so without the prior written consent of the Client, such consent not to be unreasonably withheld.

9.5 By accepting the terms of the Agreement Footprint Digital hereby agrees that:



9.5.1 the Trade Marks of the Client shall remain the property of the Client unless and until the Client assigns the Trade Marks of the Client, to a third party;

9.5.2 nothing in the Agreement shall be deemed to confer any ownership rights in the Client's Trade Marks to Footprint Digital; and

9.5.3 Footprint Digital shall not contest the validity of the Client's Trade Marks.

9.6 The Client shall indemnify Footprint Digital against all damages, losses and expenses arising as a result of any action or claim of infringement of Intellectual Property Rights by a third party.

9.7 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on Footprint Digital obtaining a written licence from the relevant licensor on such terms as will entitle Footprint Digital to license such rights to the Client.

9.8 Footprint Digital shall be free to utilise for the benefit of its other clients any skill and/or know-how that it may develop or acquire in the performance of the Services.

9.9 Unless otherwise indicated, Footprint Digital shall be the sole and exclusive owner of any domain names which it registers and develops during the performance of the Services.

9.10 All Intellectual Property Rights in or arising out of or in connection with the Services (other than the Intellectual Property Rights of the Client (including in the Website)) shall be owned by Footprint Digital.

9.11 The Client covenants with Footprint Digital that it shall not, at any time, share, disclose or otherwise any details or information relating to or connected with any Intellectual Property Rights of Footprint Digital, including but not limited to any methods and know-how of Footprint Digital, unless required to do so by law, unless such details or information are already in the public domain due to disclosure by a third party, unless it is permitted by this Agreement to do so or the Client has obtained the express written consent of Footprint Digital. The Client agrees to indemnify Footprint Digital against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Footprint Digital arising out of or in connection with a breach, negligent performance or non-performance of the obligations contained in this clause.

## TERMINATION

10.1 Either Party may terminate the Agreement by giving written notice to the other Party if:

10.1.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 14 days of the due date for payment;

10.1.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 30 days after being given written notice giving full particulars of the breach and requiring it to be remedied;



10.1.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

10.1.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

10.1.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or reconstruction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);

10.1.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party; or

10.1.7 the other Party ceases, or threatens to cease, to carry on business.

10.2 For the purposes of Clause 10.1.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

10.3 In the event that a Third-Party Provider, which is essential to the provision of the Services by Footprint Digital, terminates its services with Footprint Digital, Footprint Digital can terminate the Agreement on reasonable notice to the Client.

10.4 Without affecting any other right or remedy available to it, Footprint Digital may suspend the supply of Services under the Agreement or any other agreement between the Parties, or terminate the Agreement, if the Client becomes subject to any of the events listed in 10.1.2 to 10.1.7 (inclusive) or Footprint Digital reasonably believes that the Client is about to become subject to any of them.

10.5 The Client is directed to the Agreement Formation and Duration section of any Schedule of Work, which forms part of the Agreement, and sets out the term and termination provisions relating to the Agreement, in addition to those set out herein.

## CONSEQUENCES OF TERMINATION

11.1 On termination of the Agreement for any reason:

11.1.1 the Client shall immediately pay to Footprint Digital all of Footprint Digital's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Footprint Digital may submit an invoice, which shall be payable immediately on receipt;

11.1.2 Footprint Digital will cease paying Traffic Providers at midnight on the day of the date of termination;

11.1.3 the Client will remove the Pixel once the Cookie Period has expired; and

11.1.4 where a Deposit was paid to Footprint Digital, Footprint Digital will repay the balance less any sums due as a result of termination of the Agreement, if any; and



11.1.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11.2 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## SUB-CONTRACTING

12.1 Footprint Digital may sub-contract the performance of any of its obligations under the Agreement without the prior written consent of the Client. Where Footprint Digital sub-contracts the performance of any of its obligations under the Agreement to any person, Footprint Digital shall be responsible for every act or omission of the sub-contractor as if it were an act or omission of Footprint Digital. The Client shall not sub-contract any of its obligations under the Agreement without the prior written consent of Footprint Digital.

12.2 Each party that has rights under the Agreement is acting on its own behalf and not for the benefit of another person.

## NON-SOLICITATION

13.1 During this term of the Agreement, and for nine (9) months after termination or expiry, the Client will not, without the prior written consent of Footprint Digital, (whether on its own behalf, in conjunction with and/or on behalf of any individual and/or organisation in any capacity) directly and/or indirectly:

13.1.1 entice or attempt to entice away from employment with Footprint Digital any person who is an employee of Footprint Digital;

13.1.2 employ, engage and/or otherwise use the services of any individual who was an employee or representative of Footprint Digital during the preceding nine (9) months; and/or

13.1.3 assist, advise or give any information to enable a third party to engage in any of the activities stated in this Clause 13.1.

13.2 Any consent given by Footprint Digital in accordance with clause 13.1 shall be subject to the Client paying to Footprint Digital a sum equivalent to 20% of the then current annual remuneration of Footprint Digital's employee, consultant or subcontractor.

## LIABILITY AND INDEMNITY – THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

14.1 Nothing in these Conditions shall limit or exclude Footprint Digital's liability for:



14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

14.1.2 fraud or fraudulent misrepresentation;

14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

14.2 Subject to clause 14.1:

14.2.1 Footprint Digital shall not under any circumstances whatsoever be liable for:

- a) loss of profits; or
- b) loss of business; or
- c) depletion of goodwill and/or similar losses; or
- d) loss of anticipated savings; or
- e) loss of goods; or
- f) loss of contract; or
- g) loss of use; or
- h) loss or corruption of data or information; and
- i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

14.2.2 Footprint Digital's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Agreement shall in all circumstances be limited to a figure no greater than twice the Fees paid for the Services in the previous twelve months, (or if 12 months have not elapsed, would be payable in twelve months).

14.3 Footprint Digital shall not be liable to the Client or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of Footprint Digital's obligations if the delay or failure was due to any cause beyond Footprint Digital's reasonable control.

14.4 If Footprint Digital's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (Client Default):

14.4.1 Footprint Digital 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 Footprint Digital's performance of any of its obligations;



14.4.2 Footprint Digital shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Footprint Digital's failure or delay to perform any of its obligations under the Agreement as set out in this clause 14.4; and

14.4.3 the Client shall reimburse Footprint Digital on written demand for any costs or losses sustained or incurred by Footprint Digital arising directly or indirectly from the Client Default.

14.5 Footprint Digital has given commitments as to compliance of the Services in these Master Terms and Conditions. In view of these commitments, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

14.6 This clause 14 shall survive termination of the Agreement.

## FORCE MAJEURE

15.1 Neither the Client nor Footprint Digital shall be liable for any failure or delay in performing their obligations under the Agreement where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

## NOTICES

16.1 Unless otherwise stated in the Schedule of Work, the Parties agree that all notices to be served under the Agreement shall be in writing and may be sent by email to each Parties' address as listed in the Schedule of Work

16.2 Notices shall be deemed to have been duly given:

16.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

16.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or

16.2.3 on the second business day following mailing, if sent by first class postage.

16.3 Service of any document for the purposes of any legal proceedings concerning or arising out of the Agreement shall be effected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time. Service under this clause 16.3 may not be given by email or facsimile.





## DISPUTE RESOLUTION

17.1 If any dispute arises in connection with the Agreement, a senior representative of both Footprint Digital and the Client shall, within 14 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

17.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

17.3 The commencement of mediation will not prevent the parties commencing or continuing court proceedings.

## GENERAL

18.1 VARIATION: Subject to the above, no variation of the Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

18.2 WAIVER: A waiver of any right or remedy under the Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

18.3 CUMULATIVE REMEDIES: Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

18.4 SEVERANCE: If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected. If a provision of the Agreement (or part of any provision) is alleged by either party to be illegal, invalid or unenforceable, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

18.5 ENTIRE AGREEMENT: The Agreement and any documents referred to in it constitute the entire agreement between the parties and supersede and extinguish all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of the Agreement. Each party acknowledges that, in entering into the Agreement and the documents referred to in it, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Agreement or those documents. Each party agrees that its only liability in respect of



those representations and warranties that are set out in the Agreement or those documents (whether made innocently or negligently) shall be for breach of contract. Nothing in this clause shall limit or exclude any liability for fraud.

18.6 NO PARTNERSHIP OR AGENCY: Nothing in the Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18.7 RIGHTS OF THIRD PARTIES: A person who is not a party to the Agreement shall not have any rights under or in connection with it.

18.8 SURVIVAL OF TERMS: Termination of the Agreement shall not affect any rights of the parties accrued up to the date of termination.

## LAW AND JURISDICTION

19.1 These Master Terms and Conditions and the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

19.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Master Terms and Conditions or the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

