

## **1854 AGENCY TERMS AND CONDITIONS**

### **1. INTERPRETATION**

The following definitions shall have the following meanings in this Agreement:

**Affiliates:** in respect of any person to whom the term Affiliate refers a company, corporation or partnership or other business entity ("entity") which is directly or indirectly controlled by or under substantially common control with or controls (as the case may be) the person so referred to and for this purpose "control" means the power of an entity to secure (whether by the holding of shares, possession of voting rights or by virtue of any powers conferred by articles of association, constitution, partnership, agreement or other document regulating the entity in question) that the entity's affairs are conducted in accordance with its wishes.

**Copyright:** all copyright and rights in the nature of copyright subsisting in the Products in any part of the world to which 1854 is, or may become, entitled.

**1854:** 1854 Media Limited, registered in England and Wales under company number 08361351.

**Customer:** as set out in the Order form.

**Order:** the order form, quotation or such other documentation signed by the parties setting out certain agreed particulars in respect of the delivery of the Products and or Services pursuant to this Agreement.

**Product:** any work produced by 1854 pursuant to the provision of the Services.

**Services:** those services whose details are set out in the Order.

### **2. FORM AND DELIVERY OF THE WORK**

2.1 1854 agrees to deliver the Services to the Customer in accordance with good professional practice.

2.2 Delivery of the Services shall be in accordance with such timescales as have been set out in the Order or agreed by the parties from time to time. The standard creative process and timeframe is set out as Schedule 1 to this Agreement or the Order and may also include deadlines for Customer to adhere to if 1854 are to meet the timescales agreed with the Customer.

1854 reserve the right to vary the standard creative process if it is not appropriate for the Products and Services being supplied or if the Products or Services demand the same and any variations including deadlines shall be set out in the Order.

2.3 1854 shall be entitled to vary such timescales and deadlines on notice to the Customer where Customer or its Affiliates, subcontractors, servants or agents causes delay in 1854 providing the Products or Services and shall also be entitled to make such charges and the Customer shall pay on demand these charges which have been caused by the delays or deadlines not being met by the Customer.

2.4 1854 shall obtain all and any necessary approvals, permissions and consents required for the Customer to use any content appearing or otherwise incorporated in

the Products where 1854 is supplying such content directly or indirectly through a third party, and shall fully indemnify Customer that use of any content in the Product shall not infringe any third parties' intellectual property rights. Where the Customer supplies any content, the Customer confirms that they have obtained any and all necessary approvals, permissions and consents required and shall fully indemnify 1854. Where 1854 use any third party software, websites or applications in providing the Products or Services, the Customer agrees to adhere to any terms and conditions applicable and shall fully indemnify 1854 in respect of any breaches of them.

2.5 On completion of the Products and or Services, subject to the signing off process set out in Schedule 1 or the Order, the Customer will be notified and have the opportunity to review. The Customer acting reasonably at all times should notify 1854 in writing, of any unsatisfactory points within 7 days of receipt of such notification. Any of the Products and or Services which have not been reported in writing to 1854 as unsatisfactory within the 7 day review period will be deemed to have been approved. Once approved, or deemed approved, work cannot subsequently be disputed and the contract will be deemed to have been completed and the percentage balancing payment payable in accordance with the Order will become due. The Agreement will remain in effect until all obligations have been completed in terms of this Clause.

2.6 If the Customer rejects the Products and or Services within the 7 day review period referred to in Clause 2.5 or will not approve subsequent Products and or Services performed by 1854 to remedy any points reported by the Customer as unsatisfactory, the parties shall acting reasonably at all times, discuss in good faith the reasons for rejection. If the parties are unable to come to agreement, the parties shall be entitled to take any legal measures available to them.

2.7 Where the Customer provides a testing regime and the regime is not passed or if the milestones are not met, Customer and 1854 will agree an amendment to the testing regime.

### 3. FEES

3.1 The Customer shall in accordance with the timings set out in the Order, pay all fees due in respect of the provision of the Services to 1854 in accordance with the terms of the Order.

3.2 All sums due to 1854 under this Agreement are exclusive of VAT.

3.3 The provisions of this clause 3 shall remain in effect notwithstanding termination or expiry of this Agreement until the settlement of all subsisting claims by 1854.

3.4 1854 reserves the right to recover all additional costs incurred and interest at 3% above Barclays Bank Base Rate that arise as a result of the acts or defaults of the Customer which shall include non-payment.

### 4. LICENCE AND RESERVATION OF RIGHTS IN THE SERVICES

4.1 Unless stated otherwise in the Order, 1854 retains all copyright and other intellectual property rights and any other rights in the Products and Services throughout the world in perpetuity and hereby grants to the Customer the exclusive non-transferable right in perpetuity (unless stated otherwise in the Order) to copy and

reproduce the Product in whole, partial or adapted form, solely for its own business purposes.

4.2 1854 shall have no right whatsoever in the Customer's intellectual property which shall include but not be limited to Customer data, images, multimedia and photographs that are incorporated into the Products save that the Customer grants to 1854 a perpetual irrevocable royalty free worldwide licence to use the Customer's intellectual property for the purpose of marketing and advertising 1854 products and services and the Customer shall fully indemnify 1854 in the event that any claim is brought against 1854 in respect of a breach of any parties' intellectual property rights from 1854's use of the Customer's intellectual Property or its inclusion in the Products or Services as requested or incorporated by the Customer.

4.3 The Customer shall not and shall procure that its employees, contractors, sub-contractors, servants or agents and those of its Affiliates do not:

(a) Attempt to duplicate, modify, disclose or distribute, sell or resell or transfer any portion of the Products except as expressly permitted in this Agreement; or

(b) make any part of the Products available to anyone whose principal place of work is not one of the Customer's sites (or those of its Affiliates), except as permitted under this Agreement or authorised by 1854 in writing; or

(c) Alter any part of the Products.

4.4 the Customer shall fully defend, indemnify and hold 1854 harmless against any and all claims, actions, proceedings, losses, damages, expenses and all costs directly or indirectly arising out of or in connection with the Customer's breach of this Agreement, provided that:

(a) the Customer is given prompt notice of any such claim; and

(b) 1854 provides reasonable cooperation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

(c) the Customer is given sole authority to defend or settle the claim.

4.5 the Customer acknowledges that it retains responsibility for configuring its information technology, security, computer programs and platform in order to access any part of the Products provided by computer networks and for the deployment of antivirus software and 1854 is not liable in anyway whatsoever for any data loss, viruses, trojans, malware or worms that may be introduced into the Customer's computer networks.

## 5. 1854'S WARRANTIES

5.1 1854 warrants that as far as it is aware, the exploitation of the rights granted by this Agreement has not infringed, and will not infringe, the rights of any third party.

5.2 Except as expressly and specifically provided in this agreement all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

## 6. ASSIGNMENT AND OTHER DEALINGS

6.1 the Customer shall not assign any of its rights or obligations under this Agreement or subject any of its rights or obligations under this Agreement to any mortgage, charge, pledge, lien, option or anything equivalent.

6.2 1854 shall not assign any of its rights or obligations under this Agreement or subject any of its rights or obligations under this Agreement to any mortgage, charge, pledge, lien, option or anything equivalent.

## 7. CONFIDENTIALITY

7.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) Is or becomes publicly known other than through any act or omission of the receiving party; or
- (b) Was in the other party's lawful possession before the disclosure; or
- (c) Is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) Is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) Is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

7.2 Each party shall hold the other's Confidential Information in strict confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

7.3 Each party shall use its best endeavours to ensure that the other's Confidential Information to which it has access is not disclosed or distributed except in accordance with the terms of this Agreement.

7.4 This clause shall survive termination of this Agreement, however arising.

## 8. LIABILITY

8.1 This clause sets out 1854's entire financial liability (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

- (a) Any breach of this Agreement; and
- (b) Any use made by the Customer of the Products or Services or any part thereof; and
- (c) Any representation, statement or tortious act or omission (whether negligent or otherwise) arising under or in connection with this Agreement; and
- (d) Any claims whatsoever brought in connection with this Agreement.

8.2 Nothing in this Agreement excludes 1854's liability:

- (a) For death or personal injury caused by its negligence; or
- (b) For fraud or fraudulent misrepresentation; or
- (c) where it is unlawful to do so.

8.3 Subject to clause 8.2 above:

(a) 1854 shall not be liable for any loss of profits, loss of business, anticipated savings, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and

(b) 1854's total aggregate 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 this Agreement shall be limited to the fees due pursuant to clause 3.1 above.

8.4 Under this clause 8, 1854's liability includes that of any Affiliate and its and their respective agents, employees and subcontractors.

8.5 1854 shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations or from carrying on business by acts, events, omissions or accidents beyond its reasonable control, including without limitation default of subcontractors, strikes, lockouts or other industrial disputes, failure of a utility service or transport or communications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

## 9. TERMINATION

9.1 1854 may terminate this Agreement with immediate effect by giving written notice if:

(a) the Customer commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so; or

(b) the Customer becomes Insolvent within the meaning of section 123 of the Insolvency Act 1986; or

(c) there is an event of Force Majeure referred to in Clause 8.5 above which prevents 1854 from delivering the Products or Services.

9.2 On termination of this Agreement for any reason unless stated to the contrary in the Order:

(a) All licences granted under this Agreement shall immediately terminate; and

(b) Subject to the exceptions in this sub-clause, the Customer shall delete the Products from its electronic media, including its computer networks, intranet and

electronic storage devices so that it no longer has an electronically functional copy of any part of the Products. For the avoidance of doubt, nothing in the foregoing sentence requires the Customer to delete or destroy printouts containing the Products that were made prior to termination, or copies of such printouts; and

(c) Termination shall not affect or prejudice the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination.

## 10. MISCELLANEOUS

10.1 1854 may at any time set off any liability it owes to the Customer against any liability of the Customer to 1854, whether any such liability is present or future, liquidated or unliquidated, under this Agreement or not. Any exercise by 1854 of its rights under this clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

10.2 Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

10.3 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

10.4 This Agreement constitutes the entire Agreement between the parties and supersedes all previous Agreements between the parties relating to its subject matter. Each of the parties acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether negligently or innocently made) other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

10.5 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.6 If any court or competent authority finds that any provision of this Agreement (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 this Agreement shall not be affected.

10.7 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from that Act. .

10.8 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be exclusively governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in

connection with this Agreement or its subject matter or formation (including noncontractual disputes or claims).

10.9 This Agreement comprises the Order and the terms and conditions set out herein. In the event of any conflict, these terms and conditions shall prevail over the Order.

Schedule 1 to the Agreement 1854 AGENCY TERMS AND CONDITIONS.