

Digital Zebra

Terms & conditions 2020

1. Definitions (and Interpretation)

- 1.1. The following expressions have the following meanings:
 - 1.1.1. “Digital Zebra”, “We” and “Us” refers to Chandresh Thakkar t/a “Digital Zebra Digital Agency” (the “Service Provider” or “Supplier”).
 - 1.1.2. “Agreement” means the agreement entered into by the Service Provider and the Client incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) through the Booking Confirmation which shall govern provision of the Services.
 - 1.1.3. “Client” and “Customer” and “You” means the party procuring the Services from the Service Provider who shall be identified in the Booking Confirmation.
 - 1.1.4. “Commencement Date” means the date on which provision of the Services will commence, as defined in the Booking Confirmation.
 - 1.1.5. “Confidential Information” means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such).
 - 1.1.6. “Fees” means any and all sums due under the Agreement from the Client to the Service Provider, as specified in the Booking Confirmation.
 - 1.1.7. “Services” means the services to be provided by the Service Provider to the Client in accordance with Clause 2 of these Terms and Conditions, as fully defined in the Booking Confirmation, and subject to the terms and conditions of the Agreement.
- 1.2. The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.3. These Terms and Conditions shall apply to the provision of services by the Service Provider to its clients in conjunction with any Agreement formed by both parties through a Booking Confirmation.
- 1.4. References to persons shall include corporations.

2. Contract

- 2.1. The Booking Confirmation constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2. The Booking Confirmation shall only be deemed to be accepted when the Service Provider issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).

- 2.3. Any samples, drawings, descriptive matter or advertising issued by the Service Provider, and any descriptions or illustrations contained in the Service Provider's catalogues or brochures or website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. Any quotation given by the Service Provider shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

3. Provision of Services

- 3.1. With effect from the Commencement Date within the Booking Confirmation, the Service Provider shall, throughout the Term of the Agreement, provide the Services to the Client.
- 3.2. The Service Provider shall provide the Services with reasonable skill and care.
- 3.3. The Service Provider shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in the Booking Confirmation.
- 3.4. The Service Provider may, in relation to certain specified matters related to the Services, act on the Client's behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties as they arise from time to time.
- 3.5. The Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the Fees that may be due as a result of such changes, giving 90 days written notice of the change to that effect.
- 3.6. The Service Provider shall use all reasonable endeavours to meet any performance dates specified in The Schedule of Work within your Booking Confirmation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.7. The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

4. Client's Obligations

- 4.1. The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services.
- 4.2. The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such

- instructions should be compatible with the specification of the Services provided in the Booking Confirmation. If such instructions fall outside of the remit of the Agreement then they will deem to be chargeable at the standard hourly rate
- 4.3. In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner and ensure that such information is complete and accurate in all material respects.
 - 4.4. If any consents, licences or other permissions are needed from any third parties then it shall be the Client's responsibility to obtain the same in advance of the provision of the Services.
 - 4.5. The Client shall comply with all applicable laws.
 - 4.6. If the nature of the Services requires that the Service Provider has access to the Client's premises or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Client.
 - 4.7. Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of the "Client's obligations" section of the Agreement shall not be the responsibility or fault of the Service Provider.
 - 4.8. Keep all materials, equipment, documents and other property of the Service Provider (Supplier Materials) at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Service Provider, and not dispose of or use the Supplier Materials other than in accordance with the Service Provider's written instructions or authorisation

5. Breach of Obligations

- 5.1. If either party's ("affected party's") performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the other party or failure by the other party to perform any relevant obligation ("Defaulting party"):
 - 5.1.1. without limiting or affecting any other right or remedy available to it, the Affected Party shall have the right to suspend performance of its obligations until the Defaulting Party remedies the default, and to rely on the default to relieve it from the performance of any of its obligations in each case to the extent the Defaulting Party prevents or delays the Affected Party's performance of any of its obligations;
 - 5.1.2. the Affected Party shall not be liable for any costs or losses sustained or incurred by the Defaulting Party arising directly or indirectly from the Affected Party's failure or delay to perform any of its obligations as set out in this "Breach of Obligations" section.
 - 5.1.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

6. Fees and Terms of Payment

- 6.1. The Client shall pay the Fees to the Service Provider in accordance with the provisions of the Booking Confirmation forming the Agreement.
- 6.2. The Service Provider shall invoice the Client for Fees due in accordance with the provisions of the Agreement on the 1st day of each calendar month.
- 6.3. Any queries in respect of an invoice must be raised within 7 days of the date of the invoice. After this date it will be deemed that the invoice has been accepted by you.
- 6.4. All payments required to be made pursuant to the Agreement by the Client shall be made within 30 days of the date of the relevant invoice.
- 6.5. All payments required to be made pursuant to the Agreement by the Client shall be made in British Pounds in cleared funds to such bank as the Service Provider may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.
- 6.6. Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 6.7. Any sums which remain unpaid following the expiry of the period stated here in this section shall incur interest on a daily basis at 8% above the base rate of the Bank of England from the original due date until the date payment of any such outstanding sums is made in full.
- 6.8. If full payment is not received within 60 days of the date of the relevant invoice, then the Service Provider reserves the right to hand over the debt to a debt recovery agent. In such cases, all fees incurred will be payable by the Client. In such cases, the Service Provider reserves the right to terminate activity on the Client's account pending full recovery of the overdue funds. This does not affect the notice period of the Agreement which will continue to run until such time that either party serves notice to the other.
- 6.9. Each Party shall:
 - 6.9.1. keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to the Agreement to be accurately calculated;
 - 6.9.2. at the reasonable request of the other Party, allow that Party or its agent to inspect those records and books of account and, to the extent that they relate to the calculation of those sums, to take copies of them; and
 - 6.9.3. within 60 days after the end of each month, submit at its own expense and supply to the other Party an auditors' certificate as to the accuracy of the sums paid by that Party pursuant to the Agreement during that month, if appropriate.
- 6.10. The Client commits to make payment by direct debit or standing order on the 30th day of each calendar month.
- 6.11. We reserve the right to review and modify fees periodically as service provision changes.
- 6.12. Reasonable travel expenses incurred during the management of your contract will be charged at cost in addition to the above fees, and will be included within the suppliers invoice alongside an itemised description. All costs will be agreed before they are

incurred. Travelling time is not usually charged. Should the time cost for travel be substantial, special arrangements may be made and additional costs included.

- 6.12.1. Travel Expenses will be charged at £0.45 per mile
- 6.12.2. Train travel will be booked at standard class rate and charged at cost. Proof of purchase will be available on request.
- 6.13. Accommodation and other costs incurred will be agreed in advance and recharged at cost. We will endeavour to find suitable accommodation at the lowest possible cost.
- 6.14. You will be provided the details of your package and any optional charges within your Booking Confirmation. These charges are reviewed periodically, and any changes will be notified to you in writing 28 days prior to implementation.
- 6.15. Service Provider invoices must be paid immediately upon receipt unless subject to credit terms as specified in your Booking Confirmation.
- 6.16. Invoices will be paid by you (without any deduction) by way of set-off or counter claim or otherwise as follows:
- 6.17. Service initiation (setup) – immediately payable upon receipt of invoice or up to 14 days from date of invoice if credit terms are made available.
- 6.18. On-going service management fees – immediately payable upon receipt of invoice or up to 14 days from date of invoice if credit terms are made available.
- 6.19. For any services agreed to in writing by the Client where a contractor or supplier requires payment before work commences, our invoice covering the same and including any additional agency fees shall be paid immediately before work commences.
- 6.20. For software development projects we will issue invoices for stage payments of the total project cost and the payments to be made will be referred to as The Payment Schedule. The initial Project Mobilisation invoice is subject to immediate payment. Subsequent stage payments shall be payable up to 14 days from date of invoice.
- 6.21. Exceptional out of pocket expenses will be charged at cost. These include air and rail fares, hotels and living expenses. Car travel will be charged at AA rates and agreed by the Client and Service Provider in advance.
- 6.22. Should the Service Provider be responsible for paying advertising spend, all advertising costs will incur a handling charge of 2.5%. Payment must be made before commencement of advertising activities.
- 6.23. Graphic design costs are charged after each piece of work (or amendments) are completed. You will be provided an estimate of the number of hours and cost in advance, which you must agree in writing (by email) before the work can commence. Once you have paid for the design (in full), the IP will be transferred to you. All third-party invoices will be passed to the customer with a 10% agency fee.
- 6.24. If our performance of any of our obligations under the contract is prevented or delayed by any act or omission by the Client or failure by you to perform any relevant obligation (Customer Default):
 - 6.24.1. without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of all services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations in each case to the extent the Customer Default prevents or delays our performance of any of its obligations;

- 6.24.2. we shall not be liable for any costs or losses sustained or incurred by you, arising directly or indirectly from the failure or delay to perform any of our obligations as set out in this Clause; and
- 6.24.3. You shall reimburse us on written demand for any costs or losses sustained or incurred by us, arising directly or indirectly from the Client Default.

7. Intellectual Property Rights

- 7.1. Existing PPC accounts will be linked to our MCC (My Client Centre) these will remain your property. However, any new campaigns or restructuring of the account will remain our property until the end of the contract and full payment is received. You can then take back the ownership of the account and run the account in-house; alternatively, you can opt for us to continue the management of the account.
- 7.2. New PPC accounts will be set up in our MCC (My Client Centre) and will remain the property of the supplier. At the end of the project you can end the contract or opt for us to continue the management of the account. Subsequently, ownership of the account will be transferred to you if you provide us one month's notice that you wish to terminate the contract.
- 7.3. The intellectual property rights (including, where appropriate, copyright and design rights) in all works created or commissioned by us and used under this agreement shall be vested in us until full payment is made. The IP will then pass to you in full except where identified in the following sub-clauses.

8. Marketing Materials

- 8.1. We reserve the rights to use your logo in our marketing material, PR, website or portfolio; unless we have agreed to a mutual NDA. For any websites that we build we will include a link back to our site with a link identifying that we have designed or developed the site. We will request separate permission to include your results in our case studies. We will provide a copy of any text or results for you to approve prior to publishing. If preferred, we are happy to present case studies results anonymously.

9. Performance Guarantees

- 9.1. Please note that we cannot guarantee any improvement in the performance of your PPC (or other paid advertising), due to many variables including your website and its ability to convert and competitor activity, amongst many, which may also affect the Cost per Click and/or the performance of your campaign. We cannot accept responsibility for any variation in the performance of your website due to seasonality, competitor activity, design and usability and other marketing conditions outside our control.

- 9.2. Whilst we cannot guarantee any specific improvement of rankings or traffic, from organic search traffic we do use techniques in line with industry best practice as approved and/or advise by Google.
- 9.3. It must be understood that we have no control over future algorithm or policy changes by Google or other search engines, but we do undertake various checks and techniques to try to ensure that the risk of a future penalty is minimised. It is essential that you inform us of any link building or digital advertising that you may carry out independently; as these may carry risks of a manual penalty if the source of the link is from a site that is known for using spam techniques or accepting payments for links.
- 9.4. The performance of an SEO project relies on you (or your developer) implementing any technical recommendations and/or uploading new optimised content within a timely manner (typically 2-4 weeks). Any delay in carrying out these tasks may seriously impact the effectiveness of a project and could even result in drops in rankings e.g. if duplicate content or spam links are not removed.
- 9.5. Delays may also hold up later phases of the project. In such cases when you or your developer have held up the progress of a project; you will continue to receive monthly invoices at 50% of the total amount of the agreed schedule. If required, the days will be banked and used at a later stage of the project i.e. once all the changes have been made. In addition, the total number of months by which the project is delayed will be added to the end of the contract, with the final 50% of the invoice charged.
- 9.6. For PR and/or social media projects; the timing and placement of your content on third-party and media sites cannot be guaranteed. Therefore, the performance of the project will be judged against the agreed plan of activities to create and place content, (as well as our knowledge of the journalists and influencers in each sector).
- 9.7. We will provide estimates of the likely hit rate from the planned activities and then report on the actual amount of content placed and the engagement with the published content (regarding audience reach, social shares, click throughs and traffic to your site, links generated etc.). If applicable, we will also determine the commercial value and ROI of the coverage (as compared to buying the equivalent media space through advertising).

10. Legal Liability

- 10.1. The Service Provider's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the total contractual value.
- 10.2. The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider.
- 10.3. Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

11. Confidentiality

- 11.1. Each Party undertakes that, except as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and for 1 year after its termination:
 - 11.1.1. keep confidential all Confidential Information.
 - 11.1.2. not disclose any Confidential Information to any other party.
 - 11.1.3. not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
 - 11.1.4. not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 11.1.5. ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of this Agreement.
- 11.2. Either Party may:
 - 11.2.1. disclose any Confidential Information to:
 - 11.2.1.1. any sub-contractor or supplier of that Party.
 - 11.2.1.2. any governmental or other authority or regulatory body.
 - 11.2.1.3. any employee or officer of that Party or of any of the aforementioned persons, parties or bodies.
 - 11.2.2. disclose any Confidential Information to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of the “Confidentiality” section of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 11.3. The provisions of the “Confidentiality” section of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

12. No Waiver

- 12.1. No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

13. Assignment & Sub-contracting

- 13.1. The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors.

14. Duration and Termination

- 14.1. The Agreement shall come into force on the agreed Commencement Date and shall continue on a continuous rolling monthly basis from that date, subject to the provisions of Clause 8 and 9 and the respective Booking Confirmation, and until written cancellation is received by either party.
- 14.2. Either Party shall have the right to cancel the Agreement, subject to the provisions of the "Termination" section and the respective Booking Confirmation and exercisable by giving not less than 90 days written notice to the other at any time following the 3 month minimum term.
- 14.3. Either Party may terminate the Agreement by giving to the other not less than 90 days written notice, to expire on or at any time after the minimum 3 month term.
- 14.4. The Service Provider may immediately terminate the Agreement by giving written notice to the other Party if:
 - 14.4.1. any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 30 Business Days of the due date for payment;
 - 14.4.2. 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 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 14.4.3. 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;
 - 14.4.4. 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);
 - 14.4.5. 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 re-construction 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);
 - 14.4.6. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 14.4.7. the other Party ceases, or threatens to cease, to carry on business; or
 - 14.4.8. control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of the "Terms" section, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

- 14.5. A breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 14.6. The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 14.7. Upon the termination of the Agreement for any reason:
 - 14.7.1. any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
 - 14.7.2. all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
 - 14.7.3. termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
 - 14.7.4. subject as provided in Clause 9 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
 - 14.7.5. each Party shall (except to the extent referred to in Clause 6 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.
 - 14.7.6. All data held by the Service Provider in respect to their role as a Data Processor under the General Data Protection Regulation, shall be removed from the Service Provider's systems.
 - 14.7.7. The section "Security and Confidentiality of Data" shall survive the termination of this Agreement and shall continue in full force and effect until all Data is returned to the Data Controller.
15. No waiver
- 15.1. No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

16. Costs

- 16.1. Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

17. Non-solicitation

- 17.1. Neither Party shall, for the Term of the Agreement or for 2 years following termination of the Agreement, employ or contract the services of any person who is or was

employed or otherwise engaged by the other Party at any time in relation to the Agreement, without the express written consent of that Party.

- 17.2. Neither Party shall, for the Term of the Agreement and for 2 years following or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party, without the express written consent of that Party.

18. Third-party Terms

- 18.1. The client will indemnify the Service Provider in full in respect of any third-party expenses suffered or incurred by the Supplier pursuant to written instructions and agreement authorised with the client. The client acknowledges that certain services may involve the licensing of third-party intellectual property rights and that the client may from time to time be required to enter into a licence directly with such third-party. The Client hereby acknowledges that certain services rely upon goods and/or services being provided by third-parties ('Third-Party Services').
- 18.2. The client acknowledges that the Third-Party Services will be governed by that third-parties' terms and conditions and that the supplier cannot provide any warranties in respect of the Third-Party's Services and will not be liable to the client for any delays and/or failings in respect of the same. Providers of Third-Party Services may provide their own warranties to the client and the client must satisfy itself whether or not such warranties (where given) are acceptable for the client's business purposes or risk management policies.
- 18.3. Third-party media expenses may be incurred as part of a marketing mix, planned and agreed before contracts are signed and itemised within your Order Confirmation. These third-party expenses include, but are not limited to; influencer fees, photography, design services etc.
- 18.4. All third-party supplier costs incurred are subject to a 10% agency fee. Costs and budget will be pre-agreed by both parties. We will invoice for all third-party costs in advance of the project. Any remaining funds retained on completion of the contract will be reimbursed to the client.
- 18.5. The client may be charged for other third-party tools. These include but are not limited to; call tracking, reporting, ad management tools etc. All specialised third-party tools required above those used for daily management will be itemised within your Order Confirmation and agreed in advance.
- 18.6. A deposit equivalent to a month's fee is required to cover the cost of all other third-party charges. No credit terms are available for third-party fees and a handling charge will normally be applied.
- 18.7. All third-party software systems and utilities including any Open Source products such as Magento or WordPress, etc, used to provide your solution remain the property of their respective owners and creators and as such are subject to their own licensing and intellectual property terms & conditions to which you must fully agree.
- 18.8. All third-party Ad Spend will be subject to a 2.5% handling fee. This will be itemised within your Order Confirmation.

19. Severance

- 19.1. In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

20. Law and Jurisdiction

- 20.1. The Agreement and these Terms and Conditions (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.
- 20.2. Subject to the provisions of the “Law and jurisdiction” section of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

21. Force Majeure

- 21.1. No Party to the Agreement shall be liable for any failure or delay in performing their obligations 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, pandemic or any other event that is beyond the control of the Party in question.
- 21.2. In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of more than 30 days, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

22. Data protection

- 22.1. The General Data Protection Regulation 2018 places certain obligations upon a Data Controller to ensure that any Data Processor it engages provides sufficient guarantees to ensure that the processing of the data carried out on its behalf is secure.

- 22.2. The "Data protection" section exists to ensure that there are sufficient security guarantees in place and that the processing complies with obligations equivalent to those of the 7th Data Protection Principle.
- 22.3. Definitions
- 22.3.1. "Data" means any personal information pertaining to the individual that may be transferred by the data controller, including, but not limited to first name, last name, email address, address, telephone number, and IP address.
- 22.3.2. "Processing" shall mean any operation or set of operations which is/are performed upon personal data, (whether or not by automatic means) including collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction. Such processing may be wholly or partly by automatic means or processing otherwise than by automatic means of personal data which form part of a filing system or one intended to form part of a filing system. A filing system shall mean any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographic basis."
- 22.4. Application
- 22.4.1. This Agreement shall apply to all Data sent from the date of this Agreement by the Data Controller to the Data Processor until either party gives ninety day's written notice of termination.
- 22.5. Purpose of Processing
- 22.5.1. The Data Processor shall process the Data it receives from the Data Controller solely for the purpose of sending email marketing communications and for lead tracking on the Client's website and for no other purpose except with the express written consent of the Data Controller.
- 22.6. Security and Confidentiality of Data
- 22.6.1. The Data Processor shall use its best endeavours to safeguard the Data from unauthorised or unlawful processing or accidental loss, destruction or damage and acknowledges that it has implemented technical and organisational measures to prevent unauthorised or unlawful processing or accidental loss or destruction of the Data.
- 22.6.2. The Data Processor shall ensure that each of its employees, agents or subcontractors are made aware of its obligations with regard to the security and protection of the Data and shall require that they enter into binding obligations with the Data Processor in order to maintain the levels of security and protection provided for in this Agreement.
- 22.6.3. The Data Processor shall not divulge the Data whether directly or indirectly to any person, firm or company without the express consent of the Data Controller except to those of its employees, agents and subcontractors who are engaged in the processing of the Data.
- 22.7. Liability
- 22.7.1. The Data Processor's liability to the Data Controller for any loss or damage of whatsoever nature suffered or incurred by the data controller or for any liability of the Data Controller to any other person for any loss or damage of whatsoever

nature suffered or incurred by that person shall to the extent permitted by law not exceed the value of £300.