

Terms and Conditions

1. Introduction

1.1 In these terms and conditions (except where the context otherwise requires) the following words shall have the following meanings:

“Client” means the person with whom Atlantis Media Ltd contracts to provide the Services;

“Contract” means these General Terms and Conditions, any applicable Special Terms and Conditions and the Service Schedule;

“Atlantis Media” means Atlantis Media Limited (Company Number 06266300) whose registered office is at 65 Woodway, Woodley, Reading, RG5 3HB;

“Services” means the services that Atlantis Media Ltd agrees to provide under the Contract;

“Proposal” means the document of proposed services prepared by Atlantis Media specifying the services to be provided to the Client, price, specification, timetable and applicable Special Terms and Conditions.

1.2 In these terms and conditions (except where the context otherwise requires):

1.2.1 the clause headings are included for convenience only and shall not affect the interpretation of these terms and conditions;

1.2.2 any reference to persons includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);

1.2.3 any reference to any other document is a reference to that other document as amended, varied, supplemented or notated (in each case, other than in breach of the provisions of these terms and conditions) at any time.

2. Application of Terms

2.1 In the event of any conflict between any of the documents comprising the Contract, the order of precedence shall be as follows (document (i) having precedence over document (ii), and so on):

(i) the Service Schedule;

(ii) the Special Terms and Conditions

(iii) these General Terms and Conditions.

2.2 Subject to any variation under clause 2.3, the Contract will be on these terms to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document). No terms or conditions endorsed upon, delivered with or contained in the Client's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These terms and conditions apply to the provision of all services by Atlantis Media. Any variation to the Contract and any representations about the Services shall have no effect unless expressly agreed in writing and signed by a director of Atlantis Media. Nothing in this clause will exclude or limit Atlantis Media's liability for fraudulent misrepresentation.

3. Ordering

3.1 Each order for Services by the Client shall be deemed to be an offer by the Client to purchase the Services subject to these terms and conditions. No order by the Client shall be deemed to be accepted by Atlantis Media until a Proposal document is issued by Atlantis Media or (if earlier) Atlantis Media provides the Services to the Client.

3.2 The Client must ensure that the terms of its order and any applicable specification are complete and accurate. All orders for Services should be given in writing to Atlantis Media by the Client in the form of a purchase order before work can commence. Should Atlantis Media accept a verbal order from the Client, Atlantis Media shall not be responsible for any mistakes or misunderstandings (made by either party) arising from such verbal order.

3.3 Any quotation is given on the basis that no contract will come into existence until Atlantis Media issues a Proposal document to the Client. Any quotation is valid for a period of 28 days only from its date provided Atlantis Media has not previously withdrawn it. Atlantis Media reserves the right to correct clerical errors or amend any quotation, estimate or proposal document if the information or specification supplied by the Client changes from that on which the estimate, quotation or proposal document was based.

3.4 Unless otherwise expressly agreed in writing, any delivery dates in the proposal document or otherwise specified by Atlantis Media are approximate only and time shall not be of the essence for delivery.

3.5 Atlantis Media reserves the right to refuse at its sole discretion to provide any Services that are deemed unsavoury or unsuitable for any reason including, but not limited to, the preparation of adult-oriented material (such as pornography) or material which promotes hatred towards persons belonging to any ethnic group, religion or sexual orientation or material which infringes copyright or is otherwise contrary to UK laws.

4. Provision of the Services

4.1 Atlantis Media shall use reasonable skill and care in providing the Services.

4.2 Atlantis Media may, at its election determine which of its personnel shall perform each of the Services and engage other personnel or sub-contractors to assist it in performing the Services.

4.3 Notwithstanding the provisions of clause 4.2, Atlantis Media will have the sole responsibility for the due and proper performance of the Services.

4.4 Atlantis Media and the Client undertake to work together to complete the Services within the timescale defined in the Proposal document (or, in the absence of such timescale, within a reasonable time from the Client's order). Atlantis Media shall use its reasonable endeavours to keep the Client informed of project progress and to meet the defined milestones. The Client shall supply all source materials in accordance with the timescales indicated in the Service Schedule or as notified by Atlantis Media.

4.5 Atlantis Media reserves the right to charge for costs incurred as a result of any failure by the Client to comply with its obligations under clause 4.4.

5. Acceptance

5.1 Any proposal document or other document which is produced by Atlantis Media as part of the Services and which requires the agreement of the Client shall be subject to a signature of acceptance by the Client. Atlantis Media will notify the Client when any such document is available for acceptance. If the Client's agreement thereto is unreasonably withheld or delayed, the provisions of clause 5.2 will apply.

5.2 Any part of the Services will be deemed to have been accepted by the Client when the acceptance criteria therefore, as set out in the proposal document, have been satisfied. In the absence of such criteria, acceptance by the Client will be deemed to have occurred on completion by Atlantis Media of that part of the Services.

5.3 Following acceptance or deemed acceptance of the Services, Atlantis Media will have no liability for the consequences of any use which the Client makes of anything delivered by Atlantis Media as part of the Services other than as set out in clause 5.4.

5.4 Atlantis Media shall remedy any goods or materials delivered to the Client which do not materially comply with their specification where Atlantis Media has been notified of the same within three months of delivery. Atlantis Media's obligations in this clause shall be its sole liability for defective goods or materials.

6. Pricing and Payment

6.1 Atlantis Media will provide creative solutions to the Client within the pricing and commercial scope of the proposal document. In the absence of specific provision in the proposal document, the price for the Services shall be the price set out in Atlantis Media's price list published on the date of commencement of the Services.

6.2 Any services supplied other than the Services shall be subject to further charges payable by the Client as set out in Atlantis Media's order confirmation and, in its absence, the relevant invoice.

6.3 Prices are quoted in UK pounds sterling only.

6.4 Unless otherwise stated, quoted prices are exclusive of value added tax and all transport, delivery and other expenses that may be incurred by Atlantis Media in the provision of the Services, all of which amounts shall be paid by the Client in addition when it is due to pay for the Services.

6.5 Payment for the price of the Services is due 30 (thirty) days from the date of Atlantis Media's invoice. Time for payment shall be of the essence and no payment shall be deemed to have been received until Atlantis Media has received cleared funds. Any invoice query must be raised by the Client within 7 (seven) days of the date of the invoice.

6.6 Atlantis Media reserves the right to charge interest accruing on a daily basis until payment is made at a rate equal to eight per cent per annum above the base rate from time to time of National Westminster Bank plc (or its successors) on any sum unpaid its due date.

6.7 The Client will reimburse to Atlantis Media any expenses incurred in connection with the recovery of monies outstanding (including legal costs on an indemnity basis).

6.8 The Client shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by Atlantis media to the Client.

7. Intellectual Property

7.1 The Client warrants that any elements of text, graphics, photographs, designs, trade marks or other assets furnished to Atlantis media for inclusion in any project (together, "the Content") are owned by Client, or that the Client has permission from the rightful owner to use the Content.

7.2 The Client warrants that it owns or controls all rights, has obtained all copyright, or has permissions, consents and waivers that are now and hereafter required for all copying, processing, scanning, printing and manipulation to be undertaken by Blue Prawn as part of the Services.

7.3 The Client also warrants that no copyright, moral rights or other intellectual property rights will be infringed by Atlantis Media carrying out the Services.

7.4 The Client shall indemnify and keep indemnified Atlantis Media against all losses, damages, claims, costs or expenses which Atlantis Media incur by virtue of any breach of the warranties under clauses 7.1 to 7.3 inclusive.

7.5 The copyright in any report, documentation, information, software or invention on whatever media, prepared or created by Atlantis Media pursuant to the Contract shall be the property of Atlantis #media not withstanding termination here of unless otherwise expressly agreed in writing between the parties. Rights to all elements of the Content remain the property of their respective owners.

7.6 Title to and risk in all equipment and other tangible property supplied by Atlantis media for the performance of the Services shall remain with Atlantis media.

8. Liability

8.1 Nothing in the Contract shall limit either party's liability for death or personal injury caused by its negligence (or that of its employees) or for fraudulent misrepresentation.

8.2 Subject to clause 8.1, Atlantis Media shall not be liable for:

8.2.1 any loss of turnover, sales or revenue; or

8.2.2 any loss of profits, goodwill or anticipated savings; or

8.2.3 any indirect, consequential or special loss or damage, arising out of or in connection with the Contract.

8.3 Atlantis Media's liability to the Client or any other party for the loss (including theft), destruction or damage to any materials provided by the Client which are deposited with Atlantis Media for whatever reason will be limited to the replacement cost of the actual material. It is the Client's responsibility to insure against such loss and damage.

8.4 The liability of Atlantis Media in respect of defects in goods provided to the Client arising from faulty materials and/or workmanship whether caused by breach of contract or negligence shall be limited to giving credit for the value of or replacing such goods PROVIDED THAT no liability shall arise unless notification in writing of such defects is received by Atlantis media within fourteen days of delivery of such goods and the alleged defective goods are returned immediately.

8.5 Atlantis Media will accept no liability for inaccuracies or mistakes in information supplied by the Client, another agency or third party or in work that has been checked and approved by the Client.

8.6 Atlantis Media will not accept responsibility for any loss suffered by the Client as a result of non-receipt of data transmitted electronically (except to the extent that such failure is a result of Atlantis Media's negligence or that of its employees). It is the Client's responsibility to ensure that the receiving end of the transmission is in full working order and compatible with Atlantis Media's systems and standard formats. It is also the Client's responsibility to ensure that the correct contact details are given to Atlantis media.

8.7 Subject to clause 8.1, Atlantis Media's entire liability to the Client for all claims made in respect of or in connection with the Contract whether in contract, for misrepresentation (other than fraudulent misrepresentation), tort (including but not limited to negligence), intellectual property infringement or under statute and however and whenever arising shall not exceed the sum total of the charges paid by and due from the Client to Atlantis Media in the first year of the Contract.

9. Changes and Additional Services

9.1 Any request by the Client for a change to the Services or for the provision of additional services or facilities ("a Change Request") shall be submitted to Atlantis Media by the Client in writing.

9.2 Atlantis Media shall use all reasonable endeavours to notify the Client within 14 (fourteen) days of receipt of a Change Request of its effect on any previously agreed timetable and price.

9.3 Atlantis Media shall not be bound by the Change Request unless and until the Client accepts the revised timetable and prices notified to it by Atlantis Media under clause 9.2.

9.4 In the absence of the Client's written acceptance within 7 (seven) days from the date of Atlantis Media's notice under clause 9.2, the Change Request shall be deemed rejected and Services shall continue to be provided as if the Change Request had not been made.

10. Term and Termination

10.1 Atlantis media shall commence work on the date specified in the Proposal document (or, in the absence of such date, within a reasonable time following acceptance of the Client's order) and shall continue thereafter until completion of the Services or unless or until the Contract is earlier terminated by either party giving to the other not less than 4 (four) weeks' prior written notice.

10.2 Atlantis Media may suspend its obligations under the Contract or may terminate the Contract at any time upon written notice to the Client if the Client fails to pay any sums due under the Contract for 14 (fourteen) days after the due date for payment.

10.3 Atlantis Media may terminate the Contract by notice to the Client if:

10.3.1 the Client commits any material breach of any term of the Contract which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same; or

10.3.2 the Client shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the Client shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver administrator or similar officer is appointed in respect of all or any part of the business or assets of the Client or if notice of intention to appoint is given or any application to court is made to appoint an administrator in respect of all or any part of the business or assets of the Client or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the dissolution, winding up of the Client or for the making of an administration order (otherwise than for the purpose of a solvent amalgamation or reconstruction).

10.4 Upon termination of the Contract, Atlantis Media shall not be liable to refund any part of any sums paid to it by the Client and the Client shall pay to Atlantis Media all sums then due under the Contract. Termination shall not affect any other rights of Atlantis Media.

11. Confidentiality

Each party undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the business or affairs of the other party which may have come to its knowledge and each of the parties shall use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

12. Force Majeure

12.1 In this Contract, "force majeure" will mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation failure of a utility service or transport network, act of God, war, riot, civil commotion, armed conflict or terrorist attack, nuclear, chemical or biological contamination, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

12.2 If either party is prevented or delayed in the performance of any of its obligations under the Contract by force majeure, that party will forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to force majeure, and will, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay and to clause 12.4, have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations. The corresponding obligations of the other party will be suspended to the same extent.

12.3 If either party is prevented from performance of its obligations for a continuous period in excess of six months, either party may terminate the Contract forthwith on service of written notice upon the party so prevented, in which case neither party will have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

12.4 The party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of force majeure will use reasonable endeavours to bring the force majeure event to a close or to find a solution by which the Contract may be performed despite the continuance of the force majeure event.

13. Waiver

13.1 The failure to exercise or delay in exercising a right or remedy provided by the Contract or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of the Contract or of a default under the Contract does not constitute a waiver of any other breach or default and shall not affect the other terms of the Contract.

14. Entire Agreement

For the purposes of this clause 14, "Pre-Contractual Statement" means any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.

14.1 The Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of the Contract.

14.2 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any Pre-Contractual Statement.

14.3 Each of the parties acknowledges and agrees that the only remedy available to it for breach of the Contract shall be for breach of contract under the terms of the Contract and it shall have no right of action against the other party in respect of any Pre-Contractual Statement.

14.4 Nothing in the Contract shall, however, operate to limit or exclude any liability for fraud.

15. Severability

If any term or provision within the Contract shall in whole or in part be held to any extent to be illegal or unenforceable, then such term or provision or part shall to that extent be deemed not to form part of the Contract and the enforceability of the remainder of the Contract shall not be affected.

16. Uncollected Materials

If any items of work including prints and original files belonging to a client are not collected after 12 months following completion of the requested work, Atlantis Media reserves the right to dispose of such material or to charge storage costs to the Client.

17. Assignment

Atlantis Media reserves the right and the Client hereby agrees to allow the use of sub-contractors or agents to provide the Services.

18. Third Party Rights

A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term

of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

19. Law and Jurisdiction

The Contract shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with the Contract.