

## Terms of Business

### 1. Definitions

1.1 In these Conditions, the following definitions apply:

<b>Business Day:</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>Charges:</b>	the charges payable by You for the supply of the Services in accordance with clause 6.
<b>Conditions:</b>	these terms and conditions as amended from time to time in accordance with clause 14.8 (of which the Proposal forms part).
<b>Contract:</b>	the contract between Us and You for the supply of Services in accordance with these Conditions and our Engagement Letter.
<b>Deliverables:</b>	the materials set out in the Proposal which We will create for You in the provision of the Services.
<b>Engagement Letter</b>	our engagement letter accompanying or referencing these Conditions.
<b>Intellectual Property Rights:</b>	all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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 rights, 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.

- Our Materials:** has the meaning set out in clause 5.1.6.
- Proposal:** the proposal document setting out the Services We will provide for You.
- Services:** the marketing services, including the Deliverables, supplied by Us to You as set out in the Proposal.
- We/Us:** Dream Projector Limited trading as New Realm Marketing (registered in England and Wales with company number 08055747) registered office 9 Highdale Close, Southgate, Llantrisant CF72 8QE.
- You:** the person, firm or company who purchases the Services from Us.

## 2. About Us

- 2.1 We are a limited company registered in England and Wales under company number 08055747 and have our registered office at 9 Highdale Close, Southgate, Llantrisant CF72 8QE . Our trading address is at 2<sup>nd</sup> Floor, Diamond Centre Wales, 3 Heol Y Twyn, Talbot Green Business Park, Talbot Green, CF72 9FB. Our VAT number is [ ].
- 2.2 You can contact us by telephoning us on 07939 242725 or by e-mailing us at [ ].
- 2.3 If you wish to contact us in writing, or if any clause in these Conditions requires you to give us notice in writing, you can send this to us by e-mail, by hand, or by pre-paid post to our trading address set out above. We will confirm receipt of this by contacting you in writing. If we have to contact you or give you notice in writing, we will do so by e-mail, by hand, or by pre-paid post to the address you initially provide to us.

### **3. Our Contract with You**

- 3.1 These Conditions together with our Client Engagement letter set out the terms and conditions on which We will supply Services to You.
- 3.2 Please ensure that you read these Conditions carefully. Your attention is in particular drawn to the provisions of clause 11.
- 3.3 Please also check that the Proposal is complete and accurate. If you have any queries relating to any matter set out in these Conditions or the Engagement Letter, please contact Us. We will make any changes in writing to avoid any confusion between You and Us.
- 3.4 These Conditions and the Engagement Letter constitute the entire agreement between You and Us. You acknowledge that You have not relied on any statement, promise or representation made or given by or on behalf of Us which is not set out in the Contract.
- 3.5 If there is any conflict between these Conditions and the Engagement Letter, the Engagement Letter shall prevail.

### **4. Provision of services**

- 4.1 We shall supply the Services to You in accordance with the Proposal in all material respects.
- 4.2 We may in the provision of the Services provide you with proofs, mock ups and other preliminary materials which We will require you to approve before We proceed to the next stage of performance of the Services. Such approval should be provided within the timescales we specify to avoid any delay in the provision of the Services. We require such approvals in writing to avoid any confusion.
- 4.3 We shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.4 We 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 We shall notify You in any such event.

4.5 We warrant to You that the Services will be provided using reasonable care and skill.

## 5. Obligations of You

5.1 You shall:

5.1.1 ensure that any information We provide in the Proposal is complete and accurate;

5.1.2 comply with any obligations placed on You in the Proposal;

5.1.3 co-operate with Us in all matters relating to the Services;

5.1.4 provide Us in a timely manner with such information, materials and consents as We may reasonably require in order to supply the Services, and ensure that any information supplied is accurate in all material respects;

5.1.5 obtain and maintain all necessary licences, permissions and consents which may be required in relation to the Services before the date on which the Services are to start;

5.1.6 keep and maintain all materials, equipment, documents and other property We may provide (**Our Materials**) at Your premises in safe custody at your own risk, maintain Our Materials in good condition until returned to Us, and not dispose of or use Our Materials other than in accordance with our written instructions or authorisation;

5.1.7 ensure that any content you supply to be incorporated in the Services does not infringe any applicable laws or regulations or third party rights and is not deemed indecent, obscene, discriminatory or offensive in any way. We reserve the right to refuse to incorporate any such content in the Services;

- 5.1.8 ensure that any database which You require Us to use in the provision of the Services contains names and contact information which are true and accurate and does not include the names and contact information for those customers/clients or potential customers/clients who have asked to be removed from the said database.
- 5.1.9 comply at all times with all applicable legislation including but not limited to the Data Protection Legislation (as defined in clause 9 below).
- 5.2 Where we are required to develop a promotion or competition for You in the provision of the Services You shall be responsible for obtaining and complying with any licences or consents required to carry on the promotion or competition, complying with any legislation governing such promotion or competition and for carrying on the promotion or competition in accordance with any applicable terms and conditions. You shall reimburse Us on written demand any costs or losses We sustain or incur arising directly or indirectly from a failure on your part to comply with Your obligations under this clause 5.2.
- 5.3 If our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by You or failure by You to perform any relevant obligation (**Default**):
- 5.3.1 We shall without limiting our other rights or remedies have the right to suspend performance of the Services until You remedy the Default, and to rely on the Default to relieve Us from the performance of any of our obligations to the extent the Default prevents or delays our performance of any of our obligations;
- 5.3.2 We shall not be liable for any costs or losses sustained or incurred by You arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 5.2; and
- 5.3.3 You shall reimburse Us on written demand for any costs or losses sustained or incurred by Us arising directly or indirectly from your Default.

## **6. Our Charges and payment**

6.1 In consideration of the provision of the Services You shall pay the Charges set out in the Proposal, which shall specify whether they shall be on a time and materials basis, a fixed fee or a combination of both.

6.2 Where the Services are provided on a time and materials basis:

6.2.1 the Charges shall be calculated in accordance with our standard daily fee rates or hourly rates (as is applicable) as set out in the Proposal (and as amended from time to time);

6.2.2 our standard daily fee rates are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;

6.2.3 We shall be entitled to charge You for any expenses reasonably incurred by the individuals whom We engage in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Us for the performance of the Services, and for the cost of any materials.

6.3 Our standard daily fee rates and hourly rates are subject to annual review. Any variation of our standard daily fee rates will normally take effect from 1 January in each calendar year. We will notify You of any increase.

6.4 We shall invoice You at the intervals stated in the Proposal or if no intervals are specified therein, We reserve the right to invoice you monthly in arrears or upon completion of the Services.

6.5 You shall pay each invoice submitted:

6.5.1 unless otherwise agreed, within 30 days of the date of the invoice;  
and

6.5.2 in full and in cleared funds to a bank account nominated in writing by We, and

time for payment shall be of the essence of the Contract. Please note We do not accept cash payments.

- 6.6 We may require You to pay a proportion of the Charges on account before We commence the supply of the Services. We shall not be liable for any delay in supplying the Services caused by Your failure to make such payment on account when requested.
- 6.7 All amounts payable by You under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Us to You, You shall, on receipt of a valid VAT invoice, pay Us 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.
- 6.8 If you do not make any payment due to us by the due date for payment We may (without affecting any of our other rights and remedies):-
- 6.8.1 suspend the Services with immediate effect until You have paid Us the outstanding amount; and/or
- 6.8.2 charge interest to You on the overdue amount at the rate of 3% a year above the base rate of HSBC Bank Plc from time to time. This interest shall accrue on a daily basis from the due date until the actual payment of the overdue amount, whether before or after judgement. You must pay us interest together with any overdue amount.
- 6.9 You shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law.
- 6.10 On occasions We may engage the services of a debt collection agency to collect overdue amounts owed to Us. You agree that We may pass Your details to such agency for the purpose of collecting in the monies owed to us by you. Should it be necessary for Us to engage the services of a debt collection agency to collect monies owed by You to Us, You will be liable to pay any costs We may incur with such agency.

## **7. Changes to supply**

- 7.1 If You require a change to the Services, please provide Us with details of the requested change in writing. We will use all reasonable endeavours to

accommodate your change. Upon receipt of Your request, We will advise you of any impact of the proposed changes upon any agreed timescales, any necessary variations to Our Charges and any other impact upon these Terms. No change will be implemented until such time as You and We have agreed the necessary changes and any additional Charges payable.

## **8. Intellectual Property Rights**

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Us. We licence all such rights to You free of charge and on a non-exclusive basis to the extent necessary to enable You to make reasonable use of the Deliverables and the Services subject to payment of our Charges and clause 6.2 below.
- 8.2 You acknowledge that, in respect of any third party Intellectual Property Rights, the use by You of any such Intellectual Property Rights is conditional on Us obtaining a written licence from the relevant licensor on such terms as will entitle Us to license such rights to You or You entering into a licence agreement with the third party provider. You undertake at all times to comply with the terms and conditions set out in any such licence agreement.
- 8.3 Unless otherwise agreed, where you require us in carrying out the Services to use any third party Intellectual Property Rights You will be responsible for obtaining any licence or consents required to enable us to use such rights. You will indemnify us against any damages, losses, costs or expenses We incur if our use of such Intellectual Property Rights in accordance with these Conditions is deemed to breach the rights of any third party.
- 8.4 In the performance of the Services We may be required to use certain online marketing platforms such as Mailchimp. You agree to comply with the terms and conditions that apply in respect of the use of such platforms. We shall not be obliged to take any action which would otherwise result in a breach of the terms and conditions associated with the use of such platform. You will indemnify us against any damages, losses, costs, or expenses We incur should You fail to comply with this clause 8.4.



## 9. Data Protection

For the purpose of this section Data Protection Legislation means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, (for so long as and to the extent that the law of the European Union has legal effect in the UK) (ii) the General Data Protection Regulation ((EU) 2016/679) and (iii) any other directly applicable European Union regulation relating to privacy. .

9.1 We each agree to comply with our respective obligations under the Data Protection Legislation.

9.2 In the performance of the Services We will generally be a data controller for the purpose of the Data Protection Legislation. How we use your personal data is set out in our Privacy Policy, a copy of which is attached or available at [insert link].

9.3 Where we are required in the performance of the Services to act as a data processor for the purpose of the Data Protection Legislation and process personal data on your behalf:-

9.3.1 You will ensure that You have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of this agreement;

9.3.2 We shall:-

9.3.2.1 only process that personal data in accordance with your written instructions, unless We are required under a legal requirement to process the personal data. Where We are under a legal obligation to process the personal data We will notify You before performing this processing unless we are prohibited from doing so;

9.3.2.2 ensure We have in place appropriate technical and organisational measures reviewed and approved by You 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);

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

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

- (a) You or We have provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
- (c) We comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- (d) We comply with your reasonable instructions notified to us advance with respect to the processing of the personal data;

- 9.3.3 assist You, at the your cost, in responding to any request from a Data Subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 9.3.4 notify You without undue delay on becoming aware of a personal data breach;
  - 9.3.5 at Your written direction, delete or return personal data and copies thereof to You on termination of this agreement unless We are required by law or regulation to store the personal data; and
  - 9.3.6 maintain complete and accurate records and information to demonstrate our compliance with the obligations imposed upon us under this clause.
- 9.4 We reserve the right at any time to revise the above data processing provisions by replacing the same with applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

## 10. Confidentiality

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the business of Disclosing Party or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the obligations of the Receiving Party under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive termination of the Contract.

## **11. Limitation of liability**

- 11.1 Nothing in these Conditions shall limit or exclude our liability for:
- 11.1.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors; or
  - 11.1.2 fraud or fraudulent misrepresentation; or
  - 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.2 Subject to clause 11.1:
- 11.2.1 We shall under no circumstances whatever be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - 11.2.2 our total liability to You in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges paid for the Services.
- 11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 This clause 11 shall survive termination of the Contract.

## **12. Termination**

- 12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.1.1 the other party commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;

- 12.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 12.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 12.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 12.1.5 the other party (being an individual) is the subject of a bankruptcy petition order;
- 12.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 12.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

- 12.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 12.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 12.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.2 to clause 12.1.9 (inclusive);
  - 12.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 12.2 Without limiting our other rights or remedies, We shall have the right to suspend provision of the Services under the Contract or any other contract between You and Us if You become subject to any of the events listed in clause 12.1.2 to clause 12.1.11, or We reasonably believes that You are about to become subject to any of them, or if You fail to pay any amount due under this Contract on the due date for payment.

### **13. Consequences of termination**

- 13.1 On termination of the Contract for any reason:
  - 13.1.1 You shall immediately pay to Us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, We shall submit an invoice, which shall be payable by You immediately on receipt;
  - 13.1.2 You shall return all of the Materials and any Deliverables which have not been fully paid for;
  - 13.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

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

## 14. General

### 14.1 Force majeure:

14.1.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of We or any other party), failure of a utility service or transport 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, storm or default of suppliers or subcontractors.

14.1.2 We shall not be liable to You as a result of any delay or failure to perform our obligations under this Contract as a result of a Force Majeure Event.

14.1.3 If the Force Majeure Event prevents Us from providing any of the Services for more than twelve weeks, We shall, without limiting our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to You.

### 14.2 Assignment and subcontracting:

14.2.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party or agent.

14.2.2 You shall not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Contract.

### 14.3 Notices:

- 14.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 14.3.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- 14.3.3 This clause 14.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

14.4 Waiver:

- 14.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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.
- 14.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.5 Severance:



- 14.5.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 14.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 14.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 14.8 Variation: Except as set out in these Conditions, any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Us.
- 14.9 Governing law and jurisdiction: This Contract, 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 governed by, and construed in accordance with, English and Welsh law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

I have read and accept the terms and conditions set out above and in the Engagement Letter

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Signed

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Dated