

## Advertising Terms and Conditions

### Definitions and Interpretation:

The following words and phrases shall have the following meanings (except where the context otherwise requires):

'Accounts' means those products and / or services of the Client provided to the Council including the Client's corporate image, intellectual property rights, copyright, trademarks, service marks, logos, designs, slogans, text, artwork, title, recordings, scripts, music, photographs, products, artistes, graphics, computer generated material, all consents, releases, moral rights, contractual obligations obtained paid or due for the purposes of Advertising;

'Advertising' means all advertising provided to the Client under this Agreement;

'Council Material' means all artwork, copy, models, designs, photographs, software, and all other material created by the Council for the Advertising in Connection with Accounts by employees of the Council that is approved by the Client into the Advertising during the term;

'Agreement' means this Agreement;

'Advertising Regulation' means any present or future applicable code of practice, adjudication, decision, guideline, direction or rule of any Advertising Regulator and includes any applicable modification, extension or replacement thereof in force from time to time;

'Advertising Regulator' means the Office of Communications ("Ofcom"), the Broadcast Committee of Advertising Practice ("BCAP"), the Committee of Advertising Practice ("CAP"), the Advertising Standards Agency ("ASA"), the ASA (Broadcast) and any other UK or EU regulator or statutory or regulatory body relevant to the Advertising and / or the Services to be provided under this Agreement;

'Client' means the person, company, partnership or other legal entity purchasing Advertising from the Council;

'Council' means Portsmouth City Council

'Commencement Date'	means the start date specified in the Order Form
'Expiry Date'	means the end date specified in the Order Form
'Existing Material'	means any photograph, TV programme, feature film, character, music sound recording, performance, book, painting, software or any other Material protected by Rights, created by a third party and in existence at the time it is desired to make use of it for the purposes of Advertising;
'Moral Rights'	means all rights described in Part I, Chapter IV of the Copyright Designs and Patents Act 1988 and any similar rights of authors anywhere in the world;
'Order Form'	means the form signed by the Client and / or the Council for the purposes of placing an order for Advertising
'Rights'	means any copyright, extended or revived copyright, design right, Registered design right, patent, performers property right, trade mark, database right or any similar right exercisable in any part of the world, including any application for registration of any patent, trade mark, registered design or similar registerable rights in any part of the world;
'Term'	means the period from the Commencement Date until the Expiry Date;
'Territory'	means the territory of United Kingdom;
'Working Day'	means a day (other than a Saturday or a Sunday) on which the clearing banks in the City of London are open for business;

In this Agreement (except where the context otherwise requires) the clause headings are included for convenience only and shall not affect the interpretation of this Agreement, use of the singular includes plural and vice versa and the use of any gender includes the other genders.

References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended extended or reenacted and to any subordinate legislation made from time to time under that provision.

## **1 Advertising Services**

1.1 The Client appoints the Council to carry out and the Council agrees to provide non-exclusive Advertising services to the Client in the Territory in relation to the Accounts during the Term in accordance with this Agreement and information contained within the Order Form.

## **2 Term of Appointment**

2.1 This Agreement shall commence and end on the dates as set out in the Order Form.

## **3 Co-operation**

3.1 The Client shall provide to the Council clear briefings and shall ensure that all the facts given about the Accounts are accurate.

## **4 Amendments to work in progress at the request of the Client**

4.1 The Client may request the Council to cancel or amend any and all plans, schedules or work in progress. The Council shall take reasonable steps to comply with any such request provided that the Council is able to do so within its contractual obligations to third parties.

4.2 In the event of any such cancellation or amendment the Client will reimburse the Council for any charges or expenses incurred by the Council to which the Council is committed. The Client shall also pay the Council's remuneration covering the cancelled or amended services as well as any charges imposed on the Council by third parties arising from the cancellation or amendment.

## **5 Conditions of Acceptance**

5.1 The Council reserves the right to omit or suspend any advertisement at any time for any reason whatsoever. In the event that the Council suspends the advertising for a period of time, the Council shall either re-fund the Client the sum of money received by the Council to cover the period when advertising has been suspended only or, extend the Term of the Agreement to cover the period of time of suspension only without refund or further compensation to the Client.

5.2 The Council accepts no responsibility or liability for any errors due to third parties, sub-contractors or inaccurate copy instructions from the Client or third parties.

5.3 The Client agrees to indemnify the Council and its agents in full in respect of any claim made against it resulting from the Advertising. The Client warrants that the advertisement copy is legal, decent, honest and truthful and that it complies with the British Code of Advertising practice and does not contravene the Council's advertising policies or other policies.

5.4 All cancellations made within 28 days of the copy deadline shall be charged in full by the Council.

5.5 All adverts need to be submitted in a print ready format in the correct size.

You will need to supply high-resolution artwork of your advert. Please supply files to the following specification:

- high-resolution PDF or JPG format
- Minimum 300dpi
- All images should be CMYK (not RGB)
- Fonts embedded, or converted to outlines/paths
- File name to include your business name

If artwork is supplied incorrectly we will ask you to resupply the PDF correctly. If you cannot provide your artwork in the above format you will be charged a correction fee, or your advert may be withdrawn and still charged in full.

If you wish us to create an advert for you, please supply all typed text and images as soon as you order. We will create your advert for you and send it back to you for approval. Please ask for prices to do this.

Email your artwork files to [advertising.artwork@portsmouthcc.gov.uk](mailto:advertising.artwork@portsmouthcc.gov.uk)

## **6 Fee**

6.1 The Client shall pay the Council the fee as set out in the Order Form within the timeframe stated on the Order Form. Interest shall be applied to any overdue payment at the rate of four percent (4) over the base rate of Barclays Bank Plc until judgment or sooner.

## **7 Value Added Tax**

7.1 All sums payable under this Agreement shall be exclusive of any value added tax that may be payable by either party.

## **8 Copyright**

8.1 The Council acknowledges that all the intellectual property rights including trademarks, copyright and any other rights in the Client's Accounts, together with any goodwill, are and shall remain the sole and exclusive property of the Client and that the Council shall not acquire any rights or interests in the Client's Accounts, including any developments or variations at any time.

8.2 On receipt of the full fee for Advertising services, the Council assigns to the Client all present and future intellectual property rights including copyright and any other rights in the product of its services in respect of the Client and the Client's Accounts within its possession or control throughout the universe for the full period of the copyright and any extensions or renewals in perpetuity.

8.3 The Client confirms and acknowledges that all copyright, trademark, service mark, logo and any other rights in the Council's trademark, design and logo, together with any goodwill are and shall remain the sole and exclusive property of the Council and the Client shall not acquire any rights or interests in the Council's trademark, design or logo including any developments or variations and undertakes not to use the Council's trademark, design or logo without prior permission in writing from the Council.

## **9 Insurance**

9.1 The parties shall effect and maintain with reputable insurers such policy or policies of insurance as may be necessary to cover the parties' obligations and liabilities under this Agreement. Neither party shall be obliged to obtain insurance cover in relation to risks arising from terrorism or military action and neither party shall be liable to the other for any loss of any kind arising from terrorism or military action.

## **10 Confidentiality**

10.1 Subject to Clause 10.4, the parties acknowledge a duty of confidentiality to each other not to disclose confidential information or commercially sensitive information.

10.2 The terms "Information" and "Request for Information" shall have the same meaning as defined in section 84 of the Freedom of Information Act 2000.

10.3 The Council is subject to the requirements of the Code of Practice on Access to Information and Freedom of Information Act 2000 (and any equivalent legislation, subordinate legislation, codes of practice and guidance notes issued in respect of the Freedom of Information Act 2000) ('FOIA').

10.4 In the event that the Council receives a Request for Information in respect of any part of the Information, the Council reserves the sole right to decide whether to disclose information when responding to a Request for Information.

10.5 For the avoidance of doubt, the restrictions in this Clause 10 shall not prevent the disclosure or use of Information in the proper performance of the Council's duties, the disclosure of Information if required by law and the disclosure of Information which has come into the public domain otherwise than through unauthorised disclosure.

10.6 The Client acknowledges that nothing in this Agreement shall affect the Council's right to use as it sees fit any general marketing or advertising intelligence gained by the Council in the course of its appointment.

## **11 Warranties and Indemnities**

11.1 If there is an error in the Advertising as published or publication is delayed or does not occur as planned, the Council shall not be liable unless this is caused by its default or neglect.

11.2 Should either party or its employees sustain any loss or liability, costs (including legal costs) or damages as a result of the other's breach of the Agreement, the party in breach shall indemnify the other subject to the provisions of Clause 12.

11.3 The Client warrants that to the best of its knowledge and belief, all the Account information supplied to the Council before and during the term will be accurate, owned by the Client and not in any way contrary to English law.

11.4 The Client warrants that the publication of the Advertising shall, to the best of the Client's knowledge and belief, not infringe any third party rights or be in any other way contrary to law.

11.5 The Client agrees to indemnify and keep the Council indemnified against any or all costs, demands, expenses, losses or damages incurred by the Council arising from or out of any cancellation, delay, alteration or disruption to the production of the Advertising which results from any act or threatened act of terrorism.

11.6 The Client accepts full legal responsibility in respect of any Advertising approved by it for publication and will indemnify the Council in respect of any loss or liability, costs (including legal costs) or damages incurred as a result of any use of the Advertising by the Client for advertising purposes.

## **12 Limitation of Liability**

12.1 Nothing in this Agreement shall exclude or limit the Council's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent such liability may not be excluded or limited as a matter of law. Subject to this but including any liability arising under any indemnity under this Agreement:

12.2.1 the Council's maximum aggregate liability under or in connection with this Agreement, whether in contract or tort (including negligence) or otherwise, will in no circumstances exceed the total remuneration payable to the Council hereunder during the preceding 12 months; and

12.2.2 the Council will not be liable under this Agreement for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

12.2 This Agreement states the full extent of the Council's obligations and liabilities in respect of the Advertising and the performance of the services. The parties agree that any condition, warranty representation or other term concerning the Advertising and / or the performance of the services which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.

## **13 Termination**

13.1 The Council reserves the right to terminate this Agreement for any reason whatsoever at short notice. In the event that the Council terminates this Agreement, the Council shall refund the Client outstanding monies held and received by the Council for advertising not yet received by the Client.

13.2 Either party may terminate this Agreement forthwith by notice in writing to the other if the other party is;

13.2.1 in material breach of any of the terms of this Agreement and, in the case of a breach capable of remedy, fails to remedy such breach within 30 days of receipt of a written notice giving full particulars of the breach and of the steps required to remedy it; or

13.2.2 (being a company) passes a resolution for winding up or a court makes an order to that effect; or

13.2.3 (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or

13.2.4 becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or

13.2.5 has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or

13.2.6 ceases, or threatens to cease, to carry on business

13.3 If the Client wishes to place Advertising direct or through another agency during the agreed period of notice it may do so provided that it pays the Council a sum the equivalent to the remuneration which the Council would have been entitled to receive had it placed the Advertising under this Agreement.

## **14 Survival of Terms**

14.1 The following clauses shall survive the end of the Term:

14.1.1 Clause 8 Copyright and other intellectual property rights

14.1.2 Clause 10 Confidential information

14.1.3 Clause 11 Warranties and indemnities

14.1.4 Clause 12 Limitation of liability

14.1.5 Clause 24 Notices

14.1.6 Clause 25 Applicable law

14.1.7 Clause 26 Dispute resolution

## **15 Advertising Standards**

15.1 Both parties shall comply with all applicable laws and Advertising Regulations issued, made or given by any Advertising Regulator.

15.2 The parties will co-operate with each other in ensuring that suitable objective factual product and other information is available as required to satisfy the requirements of any applicable law or Advertising Regulation.

15.3 The Client shall inform the Council without delay if the Client considers that any Advertising submitted to the Client by the Council for approval is false or misleading in any way contrary to law or to any applicable Advertising Regulation.

## **16 Financial Promotions**

16.1 For the purposes of this clause 16 only:

16.1.1 "authorised person" shall have the meaning set out in section 31 of the FSMA; and

16.1.2 "Financial Promotion" means any promotion for the Client pursuant to this agreement that comprises or includes an invitation or inducement to engage in investment activity (as terms are from time to time interpreted for the purposes of the FSMA);

16.1.3 "FSMA" the Financial Services and Markets Act 2000 together with any rules, orders, regulations, codes of practice delegated legislation made thereunder from time to time.



16.2 The Client shall be responsible for ensuring that it, and every Financial Promotion complies with the FSMA and all relevant rules, regulations and guidance issued by Financial Services Authority from time to time (including without limitation the "Conduct of Business Sourcebook" as amended from time to time

16.3 The Client warrants that in relation to each Financial Promotion that:

16.3.1 the Client is an authorised person and that such Financial Promotion will be seen and approved by the Client for the purposes of section 21 of the FSMA prior to being communicated to any person; or

16.3.2 if the Client is not required to be an authorised person, that such Financial Promotion will be approved by an authorised person for the purposes of section 21 of the FSMA prior to being communicated to any person; or

16.4 such Financial Promotion is otherwise permitted by the FSMA.

## **17 Data Protection**

17.1 Each party shall ensure that it shall observe their obligation under the Data Protection Act 1998 and shall indemnify the other against all actions for breaching the Data Protection Act.

## **18 Waiver**

18.1 The failure of either party to enforce or to exercise at any time or for any period any term of or any right pursuant to this Agreement shall not be construed as a waiver of any such term or right and shall in no way affect that party's right later to enforce or exercise it.

## **19 Force Majeure**

19.1 Neither party shall be liable for any failure to perform or delay in performance of any of its obligations under this Agreement caused by circumstances beyond the reasonable control of a party to this Agreement ('a Force Majeure Event').

19.2 The party claiming the Force Majeure Event shall promptly notify the other party in writing of its reasons for the delay or stoppage and its likely duration and shall take all reasonable steps to overcome the delay or stoppage.

19.3 If the party claiming the Force Majeure Event has complied with clause 19.2, its performance under this Agreement shall be suspended for the period that the Force Majeure Event continues and the party will have a reasonable extension of time for performance of its obligations given all the circumstances. As regards the delay or stoppage arising from the Force Majeure Event:

- 19.3.1 any costs arising from such delay or stoppage shall be borne by the party incurring those costs;
- 19.3.2 the party claiming the Force Majeure Event shall take all reasonable steps necessary to bring that event to a close or to find a solution by which its obligations under this Agreement may be performed despite the Force Majeure Event;
- 19.3.3 If the Force Majeure Event continues for more than 30 consecutive days, the party which is not claiming the Force Majeure Event may terminate this Agreement with immediate effect on giving written notice to the other party and neither party shall be liable to the other for such termination.

## **20 Severance**

20.1 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable then such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

## **21 Assignment**

21.1 Neither party shall assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it without the prior written consent of the other party, such consent not to be unreasonably conditioned, withheld or delayed.

## **22 Third Party Rights**

22.1 A person who is not party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## **23 Entire Agreement**

23.1 This Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement. No variation of this Agreement or of any documentation referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

## **24 Notices**

24.1 Any notice or other communication which either party is required by this Agreement to serve on the other shall be sufficiently served if sent to the other party at its specified address within the Order Form or such other address as is notified to the other party in writing as follows:

24.1.1 by hand;

24.1.2 by registered first class post or recorded delivery; or

24.1.3 by facsimile transmission confirmed by registered or first class post or recorded delivery.

24.2 Notices sent by registered post or recorded delivery shall be deemed to be served within three (3) working days following the day of posting. Notices sent by facsimile shall be deemed to be served on the day of transmission if transmitted before 4:00 p.m. on a working day, but otherwise on the next following working day. In all other cases, notices are deemed to be served on the day when they are actually received.

## **25 Governing Law and Jurisdiction**

25.1 This Agreement shall be governed and construed in accordance with the law of England and each party agrees to submit to the exclusive jurisdiction of the Courts of England over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement.

## **26 Dispute Resolution**

26.1 If any claim or dispute arises under or in connection with this Agreement, the parties will attempt to settle such claim or dispute by negotiation.

26.2 If any claim or dispute cannot be settled by negotiations within 21 days after either party has made a written offer to the other party to negotiate a settlement to such claim or dispute, the parties shall, before resorting to court proceedings, attempt to resolve the claim or dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

26.3 If the parties have not settled any claim or dispute by mediation within 42 days from the initiation of the mediation, the dispute shall be referred to and finally resolved by the courts in accordance with clause 25.