

## TERMS AND CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1.

Throughout this agreement, we use defined terms. These are words that have been capitalised and refer to the defined terms as set out in clause 11.

#### 1.2.

When we refer to 'you' 'your' or the 'client' we are referring to the person to whom the Final Proposal Document is addressed. If this is an individual, then we are providing the services to you personally and you will be responsible for our costs and charges. If there is more than one individual then we are providing to each of those on the basis of a partnership, for which all partners are jointly and severally liable for our costs. If we refer to a limited company (Ltd) or a limited liability partnership (LLP) then it is to that entity that we are taking our instructions from. If you are commissioning our services on behalf of a company, then it is your responsibility to ensure that the party named on the Final Proposal Document is true and accurate.

#### 1.3.

We will refer to 'us' 'our' and 'CMA' and this is a reference to The Creative Marketing Agency Limited. We are a limited company and registered in England and Wales with company number 09389824 and our registered office is 2 Prospect Road, Brixham Devon, TQ5 8HS.

#### 1.4.

Where we use a reference to the singular then it shall also include the plural. A reference to one gender shall include the other.

#### 1.5.

Where we refer to any legislation, for example the Data Protection Act, then it is a reference to legislation as it is in force as at the date of this agreement and to any sub-ordinate legislation that has been made under it.

#### 1.6.

Where any words are following the terms 'including', 'include', 'in particular' or 'for example' they shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

### 2. BASIS OF CONTRACT

#### 2.1.

CMA will provide the Client with a Final Proposal Document which will constitute an offer to purchase Services in accordance with these Conditions and on the basis of the work set out in the Final Proposal Document.

#### 2.2.

At the earlier of (a) the Client signing and dating a copy of the Final Proposal Document, (b) the Client paying the invoice in accordance with the Final Proposal Document, (c) CMA commencing work on your instructions (whether or not all works are completed and/or submitted to the Client), or (d) the Client writing (by letter or email) to the CMA to confirm that they are happy with the Final Proposal Document, a legally binding Contract is formed between the Client and CMA to carry out the Services as set out in the Final Proposal Document. At this point the Contract shall come into existence (Commencement Date).

#### 2.3.

You warrant that you will be purchasing the Services of CMA for business use and as such you have no right of cancellation following the Commencement Date. In the event that you do wish to cancel the Services then CMA reserves the right to charge for the Services undertaken to date, this is in order to protect CMA who will budget and allocate time and resources to the Client or Project and may not be in a position to obtain substitute work.

2.4.

Any quotation given by CMA is only valid for a period of 30 days from its date of issue.

2.5.

In the event that a project or service is provided on a continuing basis and CMA, during the lifetime of the project, makes changes to these Conditions, CMA shall notify the Client. The Client is deemed to have accepted the changes unless they have notified CMA of non-acceptance within a period of 30 days from the date of issue. In the event of disagreement with any revised terms and conditions then these Conditions shall continue to apply unless otherwise agreed.

### 3. CHANGES TO SCOPE

3.1.

The price set out in our Final Proposal Document is based on the length of time that CMA anticipates will need to be spent on your project, or in case of a subscription service the amount of hours, in order to accomplish everything that you would like to achieve. Should you wish to alter your instructions at a later date or add anything new, CMA are happy to be flexible. If the Client would like to add anything new that has not previously been covered by the Final Proposal Document CMA will provide a separate estimate which will cover the additional work.

3.2.

Please note that this initial Contract is for a minimum amount of work and you shall not be able to reduce Charges that have already been agreed by reducing the amount of work to be carried out without our prior consent.

3.3.

Acceptance of any additional services to be provided shall be dealt with in the same manner as set out in 2.2

### 4. SUPPLY OF SERVICES

4.1.

The Services shall be subscription or project based depending on the Client's individual tailored needs as described in the Final Proposal Document.

4.1.1.

Where the Services relate to Website Design and Production, Schedule 1 shall apply;

4.1.2.

Where the Services relate to Graphic and Offline Design, Schedule 2 shall apply;

4.1.3.

Where the Services relate to Marketing and Communication Services, Schedule 3 shall apply.

4.1.4.

In the event of any inconsistencies between the Schedules and these Conditions, then the terms set out in Schedules 1, 2 or 3 shall take precedence and these Conditions shall continue to apply where there are no inconsistencies.

4.2.

CMA shall supply the Services to the Client in accordance with the Final Proposal Document in all material respects.

4.3.

CMA shall use all reasonable endeavours to meet any performance dates specified in the Final Proposal Document, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. Performance is dependent on the Client meeting the Client Obligations set out in Clause 5.

4.4.

CMA 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 the CMA shall notify the Client in any such event.

4.5.

Where CMA sub-contracts any aspects of the Services it agrees to shall monitor all companies and suppliers to whom work is sub-contracted to ensure that:

- a) All deadlines are met and that all agreed budgets are not exceeded;
- b) All necessary consents, clearances and licences are obtained;
- c) All necessary consents, clearances and licenses are obtained in respect of copyright and any other rights in all the constituent elements of the Services.

## 5. CLIENT OBLIGATIONS

5.1.

The Client confirms that they have the authority to enter into this Contract on behalf of themselves, the partnership or, if applicable, the Company or Limited Liability Partnership to whom the Final Proposal Document has been addressed.

5.2.

The Client shall:

5.2.1.

Ensure that any information provided throughout the Final Proposal Document is complete and accurate and reflects the Services that the Client wants to purchase;

5.2.2.

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

5.2.3.

provide CMA, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by CMA;

5.2.4.

provide CMA with such information and materials as CMA may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

5.2.5.

obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start and until delivery of the project (this includes ensuring that any data has been collected and provided in a manner consistent with the provisions of the Data Protection Act, or any intellectual property rights in designs and materials are provided without infringement of a third party's rights under the Copyright, Design and Patents Act 1988);

5.2.6.

comply with any additional obligations as set out in the Final Proposal Document;

5.2.7.

provide CMA with clear, timely and accurate instructions in order for the Services to be provided in a timely manner; and

5.2.8.

Review CMA's work and provide feedback and/or approval within 7 days.

## 6. PRICE FOR THE SERVICES

6.1.

The price for the Services shall be as set out in the Final Proposal Document.

6.2.

The price shall be paid in the values as set out in the Final Proposal Document. Upon taking a subscription service, we request payment within 7 days of invoice submission. For projects, we request a deposit of 50% before commencing any work. For both subscription and projects will not commence any work until this is paid.

6.3.

In the event of late or non-payment CMA has the right to cease to provide the Services and/or limit access to the Services already supplied. CMA will not be responsible for any delays in meeting milestones set out in the Final Proposal Document in the event of cessation of services due to non-payment.

6.4.

Under the subscription based service, all work agreed with CMA will be non-refundable. This is in order to protect CMA who will budget and allocate time and resources to the Client or project.

6.5.

CMA shall have the right to charge interest at a rate of 8% above the base rate of the Bank of England accruing on a daily basis, compounded monthly and payable whether before or after judgment where the Client fails to make a payment on the due date.

6.6.

All prices shall be exclusive of VAT unless specifically stated throughout the Final Proposal Document or Quotation.

## 7. LIABILITY

7.1.

The liability that CMA has under these Conditions shall be limited to the fees payable in respect of the Services to be provided, and where applicable, to each element of those.

7.2.

This is a commercial agreement and accordingly we exclude liability under Sale of Goods Act 1979 and Sale of Goods and Supply of Services Act 1982 to the extent permitted (we do not exclude liability for anything that cannot be excluded by law). We will not be liable to you or any third party for damages, including lost profits, lost savings or other incidental, consequential or special damages, whether or not foreseeable (including, but not limited to, any failure to perform in a timely manner).

7.3.

You will indemnify and hold us harmless from all claims and losses arising from any information, material, data or documents supplied by you under this Contract (including any third party intellectual property claims).

## 8. INTELLECTUAL PROPERTY

8.1.

The Client guarantees that all elements of text, images or any other art work provided to CMA are either owned by the Client, or that they have permission to use them and that the Client has ensured that the Company/service name is legally available before instructing CMA.

8.2.

Subject to Schedules 1 – 3, all Intellectual Property Rights in the Services shall remain vested in and the absolute property of CMA.

8.3.

For projects, once your final payment has been received we will provide you with the final artwork in the agreed formats, or as set out in the Final Proposal Document (otherwise as pdf copies). You will have the exclusive rights to the artwork for your business and we will not use other than under clause 8.7.

8.4.

You are not permitted to edit the artwork save in accordance with clause 8.6 and as such we retain the copyright, moral rights and master files.

8.5.

If regular monthly or final payment is delayed or issues arise regarding non-payment, we reserve the right to reuse or amend concepts to be used for other projects.

8.6.

You are restricted from editing, amending, modifying or replicating the final artwork in any way except in accordance with our applicable guidelines in place from time to time. This is important for us to preserve the quality of our work. Any such editing, amending, modifying or replicating will constitute a breach of this agreement and further sums will become payable.

8.7.

We reserve the right to be credited as the author of any part of the Services and, with your permission, to showcase any part of the Services in a self-promotional capacity via online or printed media at any stage unless agreed in writing. More specifically, in line with clause 2.2 of Schedule 1 in relation to the creation of websites.

## 9. GENERAL

9.1.

Force Majeure:

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. This includes a failure of any hosting provider to allocate sufficient resource or any electrical or server failures.

9.2.

Assignment and other dealings:

The CMA may at any time assign its right under the Contract and may sub subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. This may include in house staff and freelancers with specialist skills. The Client shall not, without the prior written consent of the CMA, assign or transfer this Contract to anybody else without the prior written consent of CMA.

9.3.

Confidentiality

9.3.1.

Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients or other commercially sensitive information of the other party, except as permitted by clause 9.3.2.

9.3.2.

Each party may disclose the other party's confidential information:

9.3.2.1.

to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause; and

9.3.2.2.

as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3.3.

Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

9.4.

Entire Agreement:

These Conditions and the Final Proposal Document between CMA and the Client form the entire agreement and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Any changes to the Services shall require a new Estimate.

9.5.

Variation:

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

9.6.

Waiver

9.6.1.

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

9.6.1.1.

waive that or any other right or remedy; or

9.6.1.2.

prevent or restrict the further exercise of that or any other right or remedy.

9.7.

Severance:

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

9.8.

Third Parties:

No one other than a party to the Contract shall have any right to enforce any of its terms.

9.9.

Governing Law and Jurisdiction:

This Contract is a legal document governed by the law of England and Wales and any dispute will be dealt with under exclusive jurisdiction of the English and Welsh Courts.

## 10. DATA PROTECTION

10.1.

CMA warrants that, to the extent it processes any Personal Data on behalf of the Client:

10.1.1.

it shall act only on instructions from the Client; and

10.1.2.

it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

## 11. DEFINITIONS

The following words shall have the following meanings:

**Business Day:**

a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:**

the charges payable by the Client for the supply of the Services.

**Commencement Date:**

has the meaning set out in clause 2.2.

**Conditions:**

these terms and conditions as amended from time to time in accordance with clause 2

**Contract:**

the contract between the CMA and the Client for the supply of Services in accordance with these Conditions.

**Client:**

the person or firm who purchases Services from the CMA.

**Estimate:**

A written estimate detailing the price anticipate for the Services.

**Final Proposal Document:**

this means a final version of the project proposal document agreed between us (and signed) or, where a project proposal document has not been provided on the matter the quotation that we provide. In both cases outlining exactly what Services will be provided, the estimated price that has been agreed and the anticipated timescale. This shall include the description or specification of the Services provided by the CMA to the Client.

**Intellectual Property Rights:**

patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Personal Data:**

has the meaning given in the Data Protection Act 1998.

**Site:**

The Website that has been created by CMA for the Client.

**Services:**

the services, including the Deliverables, supplied by the CMA to the Client as set out in the Specification, including website design and production, graphic and offline design and marketing and communication services.

## **SCHEDULE 1: WEBSITE DESIGN AND PRODUCTION**

The following shall apply in respect of any website development services as stated on the Final Proposal Document

### **1. IN THIS SCHEDULE THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:**

#### **Deliverables:**

means all aspects of the software produced and/or developed by us in relation to the Services in any media, including without limitation computer programs, data, diagrams, reports and specifications (including drafts) and shall include the object code and Source Code versions of any such deliverables and related documents.

#### **Input Material:**

means the material to be provided by you, in accordance with the Final Proposal Document or as otherwise agreed between us, for delivery of the Services;

#### **Output Material:**

means the website or mobile application forming the Deliverables;

#### **Source Code:**

means the source code in the Deliverable to which it relates, in the language in which it was written, together with all related flowcharts and technical documents, all of a level sufficient to enable you to understand, develop and maintain the Deliverable;

#### **Third Party Products:**

those third party products (including any open source software) set out in the Final Proposal Documents or as otherwise incorporated into the Output Material;

### **2. INTELLECTUAL PROPERTY RIGHTS**

#### **2.1.**

Notwithstanding any provision of this paragraph 2, no Intellectual Property Rights shall pass, whether by licence or assignment, in the Deliverables until completion of the Services and payment of the Charges in full.

#### **2.2.**

We reserve the right to be credited as the creator of the website and, with your permission, to attach a link to the bottom of your website.

### **3. INPUT MATERIAL**

#### **3.1.**

All content provided by you shall be provided in a format reasonably required by us. All photographs and other graphics shall be in electronic format. We shall not be responsible for poor quality images where the poor quality is a direct result of the supply of poor quality originals from you.

#### **3.2.**

All Intellectual Property Rights in the Input Material shall remain with you and you hereby grant a licence to us to make use of the Input Materials for the Services.

### **4. THIRD PARTY PRODUCTS**

#### **4.1.**

We may be required to incorporate third party material (whether licensed software or design materials) into the Services.

#### **4.2.**

Any Third Party Products shall be supplied in accordance with the relevant licensor's standard terms and conditions of supply. We will supply you with a copy of these on request.

#### **4.3.**

Any one-off licence fees for the Third Party Products eg. Stock library images, shall be charged back to the Client, unless notified otherwise. Any recurring payments or administration charges (including account set-up and ongoing hosting charges or domain registrations) payable for the Third Party Products shall be payable by



you and we shall endeavour to procure that the supplier of the Third Party Products shall invoice you directly, or as you direct.

## 5. DELIVERABLES

### 5.1.

Unless otherwise stated all Intellectual Property Rights in the Services and Output Material created by us shall remain vested with us.

### 5.2.

We hereby grant to you a royalty free perpetual licence to use the Output Material for the purpose of the full use and exploitation of the Services that we deliver. Any bespoke Intellectual Property Rights, including object code, shall be licensed on an exclusive basis. All background Intellectual Property Rights (which for the purpose of this paragraph 2.4 means the source code for any software or material created prior to the Final Proposal Document or not specifically created for the Client) shall be licensed on a non-exclusive basis.

## 6. TESTING & ACCEPTANCE

### 6.1.

For the purposes of this paragraph 3 “testing” shall be deemed to include (but not necessarily be limited to):

### 6.2.

testing the functionality of all code on each individual page of Deliverables;

### 6.3.

checking the integrity of all links;

### 6.4.

testing the functionality of all interactive features; and

### 6.5.

testing the Deliverables on all mainstream web browsers as specified in the Final Proposal Document.

### 6.6.

Following the completion of testing by us and the making of any necessary corrections to the relevant sections of the Deliverables and the relevant sections being delivered in accordance with the milestones set out in the Final Proposal Document you shall have a period of 15 Business Days (the Testing Period) to test the relevant sections.

### 6.7.

In the event that you identify any faults in the relevant sections, you must inform us, in detail, of such faults in writing by the end of the Testing Period.

### 6.8.

Following the receipt of details of any faults from you, we shall endeavour to correct such faults in a timely manner.

### 6.9.

In the event that you fail to notify us of any faults within the period set out in clause 3.2 then you are deemed to have accepted the Deliverables in full.

## 7. BUGS/FIXES

### 7.1.

CMA will rectify errors, bugs and failures of the Deliverables that occur on the Site save for when such bugs and fixes arise as a result of use by the Client or its end users. CMA shall not be obliged to rectify errors which have been caused due to changes in technology or general computer and browser updates as a part of the initial contract however will this shall be deemed in line with clause 4.2 below.

### 7.2.

Where a fix becomes a modification to the Site, this shall be deemed a Change of Scope as set out in clause 3 of the Terms and Conditions.

## **SCHEDULE 2: GRAPHIC AND OFFLINE DESIGN**

The following shall apply in respect of any graphic and offline design services as stated on the Final Proposal Document

### **1. IN THIS SCHEDULE THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:**

Deliverables:

means all aspects of the preparation materials, sketches, ideas and visuals (including electronic files) and the final delivered graphics, logos and artistic works provided in the course of the Services.

### **2. INTELLECTUAL PROPERTY RIGHTS**

2.1.

Once the Services have been paid for in full, CMA assigns all Intellectual Property Rights in the Deliverables to the Client.

### **3. BRANDING GUIDELINES**

3.1.

Once a logo, image or piece of graphic design has been created by CMA (the Works), the Client may use the Works in accordance with CMA's guidelines which may vary from time to time. This is important in order for CMA to preserve the quality of their work. The Client may vary where the logo is used, for instance on correspondence, posters, business cards, banners or any other form of marketing material. The Client may not however vary the exact colours, font or scale used by CMA.

3.2.

CMA may use the Works in order to demonstrate their work to other existing and potential clients and reserve the right to display the Works online via CMA's website.

### **4. ACCEPTANCE**

4.1.

Acceptance by the Client shall be deemed at the earlier of:

4.1.1.

The work being signed off by the Client following a meeting between the parties or confirmation from the Client in writing;

4.1.2.

Use of the Works by the Client.

4.2.

Three rounds of iterations will be included for graphic design projects. Where iterations become a full revision, this shall be deemed a Change of Scope as set out in clause 3 of the Terms and Conditions.

4.3.

Proofs are to be approved by the Client within 7 days of being submitted to the Client by CMA. If no notice is provided to the contrary, then they shall be deemed to have been accepted after this date.

### **5. EXPENSES**

5.1.

Where printed materials are required to be purchased, the Supplier shall invoice for them.

### **SCHEDULE 3: MARKETING SERVICES**

The following shall apply in respect of any marketing and communication services as stated on the Final Proposal Document

#### **1. AGREEING SCOPE OF WORK:**

##### **1.1.**

The scope of work shall be outlined in detail throughout the Final Proposal Document.

#### **2. ACCEPTANCE OF PROOFS**

##### **2.1.**

Proofs are to be approved by the Client within 48 hours of being submitted to the Client by CMA. Failing actual acceptance, the proofs shall be deemed to be approved.

#### **3. CHARGES**

##### **3.1.**

Charges are based on the number of hours as set out in the Final Proposal Document. Where additional time is required to be incurred by CMA for any specific piece of work then CMA reserves the right to charge for such additional time taken, unless the Final Proposal Document, or any Change of Scope, agreed provides for a fixed fee in respect of that element.

#### **4. EXPENSES**

##### **4.1.**

Where printed materials are required to be purchased, the Supplier shall invoice for them.

#### **5. MARKETING AND DATA**

##### **5.1.**

The Client warrants that all data provided to CMA is valid and not corrupted, and, in the case of any database of email addresses, each is valid and the permission has been sought of the holder to accept direct marketing. In the event of any such data being corrupted or not valid, resulting in the Client being subjected to blacklisting (e.g. including, but not limited to, from Google or Microsoft Outlook) it is the responsibility of the Client to remedy such outcome and CMA accepts no liability whatsoever.

#### **6. SOCIAL MEDIA**

##### **6.1.**

CMA shall be entitled to post text and images in relation to projects undertaken onto both their own and onto client's social media accounts and the Client grants permission, and shall provide relevant access passwords and usernames, for this purpose in order that CMA can fulfil its Services.