

## 1. Terms and Conditions

The following terms and conditions ("Terms and Conditions") apply to the Contract (see definition below). These Terms and Conditions shall take precedence over any terms and conditions of the Client, whether attached to, enclosed with or referred to in any purchase order of the Client or elsewhere. They may not be varied except by written agreement between MAL and the Client.

## 2. Definitions

2.1 In these Terms and Conditions the following words shall have the meanings given in this clause:

**Client** means the person, firm or company named in the Schedule;

**Contract** means the contract between the Client and MAL consisting of the Schedule, the Proposal and these Terms and Conditions;

**Fees** means the fees to be charged by MAL as specified in the Proposal;

**MAL** means Market Appeal Limited, a company registered in England number 06883955;

**Outcomes** means the desired results, targets to be achieved or matters to be attained and which are specified in the Proposal;

**Proposal** means the written proposal setting out the Services (which may include when such services will be provided, the duration and other matters) and which is annexed to these Terms and Conditions;

**Rights** means all copyright and related rights, design rights, patents, rights in trade marks, database rights and any other intellectual property rights (whether registered or unregistered) including all similar or equivalent rights or forms of protection in any part of the world;

**Services** means those services to be provided by MAL as set out in the Proposal;

**Work Product** means all materials, software, documents, processes, Rights and know-how created or developed by MAL, its officers, agents, employees, agents and contractors in the course of the provision by MAL of the Services including without limitation all drafts and versions and the Proposal.

## 3. MAL's Obligations

3.1 MAL will supply the Services to the Client.

3.2 MAL may:

3.2.1 Offer the Client additional services. MAL may be entitled to fees for those services which shall be in addition to the Fees;

3.2.2 Recommend to a Client an independent service provider such as web designers, who may pay MAL a fee if their services are used as a result of MAL's introduction.

## 4. Client's Obligations

4.1 The Client shall:

4.1.1 Reasonably co-operate with MAL and act in good faith to enable MAL to perform the Services including promptly providing MAL with material, approvals and information in its control that is requested. If any information provided by the Client changes or becomes misleading or inaccurate during the course of the Agreement, the Client shall immediately notify MAL;

4.1.2 Provide whatever consents and authorities are required that are within its control to enable MAL to provide the Services including authorities to manage online pay-per-click and affiliate marketing accounts;

4.1.3 Ensure that its employees and other contractors co-operate reasonably with the

Client and its employees in carrying out the Services; and

4.1.4 If so requested by MAL, within 5 working days of request, promptly comply with all reasonable requests to amend its websites (including structure, keywords, page titles and metatags) made by MAL.

4.2 It shall be the sole responsibility of the Client to ensure that its websites and activities comply with all relevant laws, regulations and codes of practice in all applicable countries.

4.3 The Client shall not itself or permit any third party to change the Client's websites or metatags in them in such a way which interferes with the services being provided by MAL.

**5. Fees**

5.1 The Client shall pay the Fees to MAL as described and at the times set out in the Proposal and in these Terms and Conditions. The Client shall also pay third party costs and fees as set out in the Proposal such as but not limited to payment for Google AdWords.

5.2 Without prejudice to any other right or remedy that it may have, if the Client fails to pay MAL any amounts on their due date, MAL may suspend some or all of its obligations under the Contract until payment has been made in full. In addition, MAL may deactivate links and remove material that it has or had arranged to be posted on the Internet as part of the Services.

5.3 All Fees are exclusive of and subject to VAT. Unless specified differently in the Proposal, fees are payable 30 days following the date of any invoice.

5.4 All payments must be made without any deduction or set-off whether legal, equitable or otherwise.

5.5 All monies payable under the Contract exclude and are subject to VAT.

**6. Approvals**

6.1 Written approval by the Client of any material will be MAL's authority to proceed using that material.

6.2 Where material is sent to the Client for approval, the Client shall check it carefully and notify MAL by email, fax or post of any errors or alterations. MAL will use its reasonable endeavours to effect any changes so notified.

6.3 While MAL will where requested seek to obtain prior approval of material to be posted on the Internet as part of the Services, the Client acknowledges that due to the nature of the Services, no guarantees can be provided that this will be done or that no amendments will be made to the material prior to or following its posting on the Internet.

6.4 The Client specifically acknowledges that as part of search engine techniques, material and links concerning the Client will be placed on third party websites not controlled by MAL. While MAL will use its reasonable endeavours to remove such material if so requested, it cannot guarantee to do so and nor can it guarantee or control what other material appears or is linked to from those websites.

**7. Terms and conditions**

**7. Intellectual Property**

7.1 All Rights in material supplied by the Client shall remain vested in the Client but the Client grants MAL an irrevocable royalty free licence to use such material (and to permit third parties such as other Internet sites) to use such material in connection with the subject matter of the Contract.

7.2 All Rights in material supplied by MAL and the Work Product shall remain vested in MAL (or its licensors). Where specific articles for posting on the Internet are commissioned by MAL as part of the Services, MAL will on request and subject to all Fees having been paid transfer to the Client such rights (if any) as it has in them.

7.3 If MAL uses in the course of provision of the Services any trademarks, trading styles or trade names owned by the Client or which the Client instructs MAL to use ('Marks'), the Client agrees that MAL shall have the right to use or allow use of any such Marks for the purpose of fulfilling MAL's obligations under the Contract. MAL shall not gain any rights over such Marks by virtue of such use, but MAL shall be entitled to use the Marks both during and after the supply of the Services to promote and advertise its own work.

7.4 It shall be the Client's responsibility to ensure that all domain names used in connection with the Proposal are wherever practicable properly registered and do not infringe any third party rights and that any Marks of the Client or any third party used by MAL with the authority of the Client, do not infringe any third party rights.

7.5 MAL is not obliged to return any material supplied by the Client.

**8. Warranties**

8.1 MAL warrants that the Services shall be provided with reasonable care and skill with a view to achieving the Outcomes.

8.2 Without prejudice to the foregoing, MAL warrants that:

8.2.1 The marketing material (including any links which redirect to the Client's website) will be placed on websites/web pages MAL is authorized to use;

8.2.2 The Services will be provided in compliance with all applicable laws

and binding regulations.

8.3 The Client warrants that:

8.3.1 All information it supplies to MAL in connection with the Contract is accurate, complete and true and that the Client has authority to use such material and permit MAL to do so;

8.3.2 In entering into this Agreement it does not breach any obligation to any third party, and that its performance of its obligations under this Contract will not breach any applicable law or regulation;

8.3.3 All websites in respect of which the Services are provided comply with all applicable laws, regulations and codes or practice, are not obscene, illegal or defamatory.

8.4 MAL gives no warranties in relation to:

8.4.1 The accuracy of any information supplied by the Client;

8.4.2 Any search engine position that will be achieved or maintained;

8.4.3 The number of visitors to the Client's websites or any sales that will be achieved;

8.4.4 Whether any particular keywords will be recognized or added to by any search engine;

8.4.5 Whether any particular Outcomes will actually be achieved whether by any date or at all;

8.4.6 Actions carried out by the Client that are not approved by MAL.

8.5 The Client confirms that in relation to the matters in clause 8.4 it shall not rely on any statement or representation made by MAL but shall rely on its own judgment.

8.6 MAL is not responsible for any effects on

the Services that may be caused by:

8.6.1 Changes in the methodology employed by search engines;

8.6.2 The IP addresses used by the Client;

8.6.3 The supply or specification by the Client of unsuitable material or content;

8.6.4 Any failure or delay of telecommunications systems including the Internet, computer viruses, or third party failures to provide services.

8.7 Save for the obligation of the Client to pay the Fees, neither party shall be liable to the other for loss of revenue, loss of actual or anticipated profits, loss of contracts, loss of the use of money, loss of anticipated savings, loss of business, loss of opportunity, loss of goodwill, loss of reputation, loss of data or any indirect or consequential loss; and such liability is excluded whether it is foreseeable, known, foreseen or otherwise. For the avoidance of doubt, clause 8.7 applies whether such losses are direct, indirect, consequential or otherwise.

8.8 Nothing in the Contract shall exclude or restrict MAL's liability for death or personal injury resulting from its negligence, liability for fraudulent misrepresentation or any other liability which cannot be excluded or limited under applicable law. Subject to this, MAL's total liability to the Client in contract law or in tort or otherwise howsoever arising in relation to this Contract is limited for each claim or series of claims arising from the same event to the greater 125% of the total Fees paid for Services in the 12 months preceding the claim. 8.9 All warranties, conditions and other terms implied by statute, common law or otherwise are hereby excluded from the Contract to the fullest extent permitted by law.

8.10 MAL does not guarantee that any material posted as part of the Services will remain available online for a period greater than that agreed with the Client in writing. Where a link is found to be inactive within such (if any) agreed period, MAL will replace that link without additional charge to the Client.

### 9. Indemnity

9.1 The Client agrees to indemnify and hold harmless MAL and MAL's agents and employees from any liability, cost, loss, damages award, sum payable by way of settlement or other expense of any kind (including reasonable legal fees) directly or indirectly arising from any claim, demand or action alleging that:

(i) the Client's websites or any part of them is contrary to any law, code or regulation in any country

(ii) the material provided or approved by the Client or any part of it is false, misleading, unlawful, defamatory, blasphemous or obscene in any way

(iii) material supplied or approved by the Client infringes the rights of any third parties

(iv) Marks and/or Rights which the Client requests MAL to use in the performance of the Services and/or domain names used by the Client infringe the rights of any third parties.

### 10. Publicity and Examples

10.1 MAL shall have a continuing right to use the material supplied by the Client for the purposes of advertising or otherwise promoting MAL's work.

### 11. Assignment and Sub Contracting

11.1 Neither party may assign its rights or obligations without the consent of the other not to be unreasonably withheld or delayed.

11.2 MAL may sub-contract its obligations

under the Contract and perform any of its obligations through agents and/or sub-contractors.

### 12. Data Protection

12.1 Each party to this Agreement shall ensure that in performing its obligations under it, it complies with the provisions and obligations imposed on it by legislation in force from time to time or any lawful requirement or demand of any competent authority relating to data protection. The Client consents to any personal data concerning its officers, agents or employees to be transferred outside the European Economic Area and warrants that it has appropriate consents for this from all relevant persons.

### 13. Confidentiality

13.1 Each Party ('Receiving Party') shall keep the confidential information of the other Party ('Supplying Party') confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party shall only use the confidential information of the Supplying Party for the Purpose and for performing the Receiving Party's obligations under the Contract. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause, and ensure that the Receiving Party's officers, employees and agents meet these obligations.

13.2 The obligations of clause 13.1 shall not apply to any information which:

13.2.1 Was known or in the possession of the Receiving Party before the Supplying Party provided it to the Receiving Party;

13.2.2 Is, or becomes, publicly available through no fault of the Receiving Party;

13.2.3 Is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making

such a disclosure;

13.2.4 Was developed by the Receiving Party (or on its behalf) who had no direct access to, or use or knowledge of the confidential information supplied by the Supplying Party; or

13.2.5 Is required to be disclosed by order of a court of competent jurisdiction.

13.3 This clause 13 shall survive termination of this Contract for a period of 12 months.

### 14. Notices

14.1 All communications relating to this Contract shall be in writing and delivered by hand or sent by post, email or facsimile to the party concerned at the relevant address set out in the Schedule (or such other address as may be notified from time to time in accordance with this condition by the relevant party to the other party). Any such communication shall take effect upon delivery or 3 days after posting, if later. Notices may be given by email. Any written documents shall be deemed as properly served when served on the other party's address as set out in the Schedule and shall be deemed to have arrived at the time of delivery if delivered by hand or by fax or by email, and 48 hours from the date of posting if by post, provided that if deemed receipt if not on a business day or delivery is after 5pm on a business day then the notice shall be deemed to be served on the following business day. A business day is any day which is not a Saturday, Sunday or a public holiday in London;

### 15. Termination

15.1 Subject to any minimum period set out in the Proposal, either party may terminate the Contract by 30 days' written notice to the other. No amounts paid in advance to MAL will be refunded. If there is a minimum period set out in the Proposal, then notice to terminate the Contract may not expire prior to the end of the minimum period.

15.2 MAL may terminate the Contract with immediate effect if it considers the Client's websites or activities to be obscene, unlawful or defamatory.

15.3 Either party (the "Terminating Party") shall be entitled to terminate this Contract with immediate effect by written notice to the other party (the "Defaulting Party"):

15.3.1 On or at any time after a breach by the Defaulting Party of any of its material obligations under the Contract which is not remedied within 14 days of being requested to remedy it in writing; or

15.3.2 If the Defaulting Party becomes insolvent, ceases or threatens to cease business is dissolved or enters into a voluntary arrangement with its creditors or has a receiver appointed over all or any of its assets or goes into administration or has a provisional liquidator appointed or goes into liquidation or a petition is presented for its winding up or any similar occurrence to those referred to in this sub-clause affects the Defaulting Party.

15.4 Such termination shall be without prejudice to the parties' accrued rights and liabilities, including MAL's entitlement to payment for work done. The obligations of the parties under clauses 2, 7, 8, 9, 13, 17, 18 and 19 and any other provision necessary for the interpretation or enforcement of the Contract shall survive termination.

**16. Matters Beyond MAL's Reasonable Control**

16.1 MAL is not liable for any breach of the Contract caused by matters beyond its reasonable control including acts of God, fire, lightning, explosion, war, disorder, epidemic, flood, industrial disputes (whether or not involving MAL's employees), technical problems, breakdown or malfunction of equipment,

default of suppliers or sub-contractors, weather of exceptional severity, hardware or software failures, or acts of local or central government or other authorities or threats of any of the foregoing. If any such matters continue for a period of 3 months or more, then the Client or MAL may terminate this Contract.

**17. Interpretation**

17.1 In this Agreement unless the context otherwise requires:

17.1.1 Words importing any gender include every gender; words importing the singular number include the plural number and vice versa; words importing persons include firms, companies and corporations and vice versa.

17.1.2 Any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

17.1.3 The headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation;

17.1.4 Any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation made under that enactment; and

17.1.5 Where the word 'including' is used in this Agreement, it shall be understood as meaning 'including without limitation'.

**18. General**

18.1 The Contract is the entire agreement between the parties relating to its subject matter and supersedes (in the absence of fraud) all representations, communications and prior agreements between the parties relating to its subject matter. The Contract may only be varied with the written agreement signed by duly authorized signatories of the parties. Each party

acknowledges that it has entered into this Contract in reliance only on the representations, warranties, promises and terms contained or expressly referred to in the Contract and, save as expressly set out in these terms and conditions, neither party shall have any liability in respect of any other representation, warranty or promise unless it was made fraudulently.

18.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

18.3 Nothing in the Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties.

18.4 In the event of any conflict between these Terms and Conditions, the Schedule and the Proposal, the following order of priority shall apply: first the Proposal, second, the Schedule and third, these Terms and Conditions.

18.5 No delay in exercising or non-exercise by either party of any of its rights under or in connection with this Contract shall operate as a waiver or release of that right. Any such waiver or release must be specifically granted in writing signed by the party granting it.

18.6 No term of this Contract is enforceable pursuant to the *Contracts (Rights of Third Parties) Act 1999* by any person who is not a party to it.

**19. Governing Law and Jurisdiction**

19.1 This Contract shall be governed by and

construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English Courts.

**This Schedule and the Proposal are subject to the "Terms and Conditions" annexed to this document.**

**We agree to the terms of the Contract (as defined in the Terms and Conditions)**

**Name:** \_\_\_\_\_  
(print name)

**Position:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Signed: \_\_\_\_\_  
Duly authorised on behalf of the Client