



PUBLISHER SERVICES AGREEMENT ('PSA')

This Publisher Services Agreement ("Agreement") is entered into between:

- A. Convertr Media Limited, a company registered in England and Wales with company number 07605651 with registered office at The Broadgate Tower, Third Floor, 20 Primrose Street, London, EC2A 2RS ("Company"); and
- B. you ('Publisher').

The Company and Publisher shall together be referred to as the 'Parties'.

- A. The Company is an internet marketing company that specialises in lead generation and affiliate marketing connecting Publishers and advertisers ('Advertisers') for the online publication of advertising campaigns via a proprietary technology platform.
- B. You, as the Publisher operate a business web-site whereby you offer web and Email based promotional methods to generate leads ('Leads') for Advertisers by driving user traffic to that Advertiser's website ('Services') in relation to an Advertiser's marketing campaign ('Campaign').
- C. You source Campaigns through the Company and contract with the Company and advertise Campaigns on the terms of this Agreement and any purchase order ('PO') provided by the Company (the Company has deemed one necessary)

The Company and Publisher (including all its successors and permitted assignees) agree that valuable consideration has been given and that this Agreement (and any accompanying PO) shall govern the relationship between them.

Clause headings shall not affect the interpretation of this Agreement.

YOUR ATTENTION IS PARTICULARLY DRAWN TO CLAUSES 8, 10, 11.

1. Commencement of Campaign Services

- a. The Publisher shall apply to the Company and register their interest in being involved in an Advertiser's Campaign subject to the terms of this Agreement. The Company may also put forward the name of the Publisher to certain Advertiser's which the Company believe would be suited to the advertising methods of the Publisher.
- b. The Publisher shall be responsible for their account with the Company and protecting their password. The Company shall not have any responsibility for any loss suffered by the Publisher as a result of the theft or unlawful use of their password. In the event that the Publisher's account is breached they shall immediately inform the Company.
- c. The company may send a PO for a Campaign that the Publisher is involved in and in this case the PO and this Agreement shall govern the relationship between the Parties.
- d. In the event that the Advertiser has requested any specific terms to form a part of this Agreement these will be included in any PO and shall be deemed to form a part of this Agreement.
- e. The Publisher agrees that the Company and any affiliated businesses may send emails and other communications to the Publisher. The Publisher should contact their Company representative if they wish to discuss changing their email preferences.

2. Provision of Campaign Services

- a. The Publisher shall provide the Services in accordance with best practice and ethical standards. As such the Publisher shall not permit the Advertiser's website to be included in blogs, message boards, unsolicited emails, chat rooms and any type of spam or similar medium that would be considered to be disreputable. In the event that the Publisher intends to use mediums such as internet relay chat channels or similar, it must first obtain permission from the Company.
- b. The Publisher shall use their best endeavors to ensure that all links to the Advertiser's website are genuine and create legitimate transactions by a user to the Advertiser's website. The Publisher must use their best endeavors in accordance with industry standards to ensure that no devices, programs or similar interfere with the generation of genuine Leads. The Publisher shall not be paid for any Leads which are found to not be genuine. In the event that numerous Leads are generated from the same source then these may, in the sole discretion of the Company, be considered to be non genuine Leads and as a result the Publisher shall not be paid for them.
- c. It is the Publisher's responsibility to ensure that any links to the Advertiser's website are regularly updated and functioning correctly. The Company shall not be responsible, or have any liability to pay the Publisher for any time when the relevant links were not functioning and as such the Publisher failed to earn payment for Leads during that time.
- d. The Parties shall both use their reasonable efforts to ensure the availability of their websites during business hours. The Parties are aware that it is the nature of web based work that there can be occurrences of downtime and to this end neither party shall hold the other party liable for any downtime that occurs, provided that the duration and frequency of downtime is as would be expected in the industry and is not unreasonable.

3. Publisher's Duties

- a. The Publisher will act with all due care, attention and in accordance with industry standards in the provision of the Services.
- b. The Publisher will provide the Services in accordance with the PO, under the terms of this Agreement and in line with any additional instructions received from the Company.
- c. The Publisher shall at all times ensure that the Company is provided with up to date and accurate information regarding the Services that the Publisher shall provide including such detail regarding the Services as the Company may require.
- d. The Publisher shall ensure that their account with the Company is up to date and clearly details the marketing services that the Publisher can provide. The Publisher is aware that there may be some services that the Publisher can provide which will require special approval from the Company. Whether such special approval is required will be made clear to the Publisher. In the event that special approval is required the Publisher shall not be permitted to use such marketing methods until they have sought and obtained such prior approval from the Company. If the Publisher is in any doubt as to whether special approval is required they should ask their Company representative.
- e. The Publisher acknowledges and understands that it must not be involved in or facilitate the involvement of any form of spam or other unsolicited or unethical advertising. The Publisher warrants that it will not be involved in such matters and that it shall comply with all laws relating to Email and web base marketing and advertising.
- f. Any reference to pop-ups in this Agreement shall also be deemed to refer to pop-unders. The use of pop-ups must be in accordance with all relevant laws and regulations and must not have the effect of forcing clicks or re-directions over a pay per click listing or directory,. Any pop-ups that the Publisher utilises (including for the avoidance of doubt any downloadable software that the pop-up requires) must not involve any third party software. All pop-ups must originate from the Publisher.
- g. The Publisher shall have a clearly viewable and accessible privacy policy (both on their website and as part of any advertising which is not website based) which is clearly written, accurate, comprehensive and provides sufficient information for consumers. The policy must state how that consumer's information is collected, used, stored and secured. The consumer must be given the opportunity to opt out of their information being collected and stored.

- h. The Company operates a tracking count system and the Publisher shall take whatever steps are necessary to enable the Company to ensure the functionality of that system in line with the provision of the Publisher's services.

4. Company's Duties

- a. The Company will provide a reasonable level of support to the Publisher through the Company's website as the Company in their sole and reasonable discretion deem necessary. The Company may also offer other types of support from time to time for which a fee will be payable should the Publisher wish to utilise such additional support facilities.
- b. The Company shall provide a tracking count system and shall determine the number of leads or sales that the Publisher has generated from the provision of the Services. There may be occasions when the Company is required to estimate the number of Leads generated. It shall be in the Company's sole discretion whether or not it is necessary to estimate the Leads. Any estimate of Leads must be based on an analysis of the past number of Leads generated by the Publisher as part of the Campaign. The amount paid to the Publisher must be fair and reasonable on this basis.
- c. The Company shall give the Publisher such access to the tracking count system as is reasonably required by the Publisher. The Company cannot provide tracking data on a real time basis and the Publisher should expect a level of delay in receiving data. The Company may from time to time seek to offer enhanced tracking count system access, but shall not be obliged to do so.
- d. In the event of transactions that are not genuine, returns, repeat or error entries, Leads or sales where the user does not make payment or is given a refund (where such is applicable to the Campaign) or the Publisher otherwise fails to comply with the terms of this Agreement the Company may (and at the request of the Advertiser may) place a form of debit of Leads or sale actions on the Publisher's account.
- e. In the event that the Company is required to use a platform to clean data generated as a result of this Agreement then the privacy policy operated by the Company shall apply to the use and holding of such data. The Publisher is aware that the Advertiser may insist that the Company cleans the data collected. All such data will be handled in accordance with industry standards and the Company's privacy policy. The Publisher may ask for a copy of the privacy policy at any time.

5. Invoicing and Payment

- a. The Company operates three billing types depending on the Campaign that the Publisher is working on; Cost per Lead (CPL), Cost per Order (CPA) or Cost per Mille (CPM) as follows:
 - i. In a CPL Campaign the Publisher will be paid for each Lead that they generate for the Advertiser and as recorded as genuine Leads by the Company's tracking system. The Publisher shall not be paid for any Leads which the Company and/or the Advertiser does not in their reasonable opinion believe to be genuine.
 - ii. In a CPA campaign the Publisher is only paid when a user has placed an order with the Advertiser and such order has been completed by the Advertiser, paid for and can no longer be refunded or revoked.
 - iii. In a CPM campaign the Publisher is paid per thousand impressions registered in a website by the readers. If a publisher does not deliver the number of impressions as per the order their payment will be reduced accordingly.
- b. The Company cannot guarantee any level of payment to the Publisher that any Campaign may generate. Any amount of payment suggested in the PO is to be taken as an indication only and the Publisher is aware that the Campaign may not generate that figure and that the figures are not guaranteed.
- c. Once a month the Company will report to the Publisher as to the number of Leads or sales that have been generated (as applicable) or in relation to the number of orders that have been secured (as applicable). On the basis of this report (and taking into consideration any invalid Leads that should be deducted from the genuine Leads) the Company shall within 60 days of issuing of the report pay the Publisher such sums as are due for the provision for the Services as detailed in the report in accordance with the terms of this Agreement.
- d. Payment Cycle
 - i. All commissions that have been generated between the first and last day of each month are subject to a validation period where by both the Company, and the Advertiser will scrutinize each transaction for

fraud or duplicate orders. This will be known as the correction period and will occur between the 1st and the 10th of each month and will apply to all transaction generated in the month prior.

- e. In the event that any report rendered by the Company under clause 5.c is disputed:
 - i. The Publisher must raise such dispute within 15 days of the date of the report. Should no dispute be raised then the report shall be treated as undisputed and payable.
 - ii. Any dispute raised by the Publisher must be supported with any relevant documentation and a detailed analysis of the dispute.
 - iii. The Company's tracking count shall be final and binding.
 - iv. The Company's official report sent to the Publisher shall be the sole document representing sums payable to the Publisher. Information or data provided by any representative of the Company shall not form any report or indication of final billing numbers and should not be relied upon.
- f. The billing report prepared by the Company and sent to the Publisher is in lieu of any invoice being submitted by the Publisher.
- g. Payment shall only be made to the Publisher once the Company has received payment from the Advertiser. The Publisher agrees and understands that the nature of the relationship between the Company and the Advertiser and the Company and the Publisher is such that the Company cannot be reasonably expected to make payment to the Publisher until they are in receipt of funds from the Advertiser. In the event that the Advertiser defaults on making payment to the Company such that the Publisher is not paid on time under this Agreement then the Publisher shall have a right of action against the Advertiser in relation to nonpayment.
- h. The Company shall have no liability whatsoever in relation to any nonpayment which is a result of the Advertiser failing to put the Company in funds to enable it to make payment to the Publisher.
- i. In the event that the Company overpays the Publisher the Publisher shall immediately re-pay the overcharged amount to the Company.
- j. **The Publisher has carefully reviewed the terms of this clause 5 and agrees that they are reasonable terms to be included in this Agreement.**

6. Intellectual Property

- a. To enable the Publisher to market the Campaign, the Advertiser grants the Publisher a nonexclusive, royalty free irrevocable license to use the creative and Campaign materials in such manner as is necessary to carry out the Advertiser's Campaign (in accordance with the terms of this Agreement) provided that the Publisher does not alter any of the creative or Campaign materials in any way. This shall include, but not be limited to marketing, transmitting, distributing, performing and promoting the Campaign in accordance with the terms of this Agreement.
- b. The Publisher shall have no ownership rights whatsoever in relation to the information gathered regarding users as a result of the provision of the Services.
- c. The Publisher grants the Company the right to use the Publisher's name, trademark and logos and any copyright materials to enable the Company to demonstrate the Publisher's involvement with the business of the Company.
- d. The Company grants the Publisher with the right to use the Company's name, trademark and logos and any copyright materials to enable the Publisher to demonstrate the Company's involvement with the business of the Publisher. The Publisher shall not seek to use or create any trademarks or similar that are the same as, or would be considered similar to those of the Company.
- e.
- f. Each party (including the Advertiser) shall remain the owner of their intellectual property rights and of any goodwill generated for that party as a result of that intellectual property right.
- g. The Publisher acknowledges and agrees that they do not and shall not have any rights over any of the Company's or Advertiser's intellectual property and shall not attempt to assert such a right. In addition the

Publisher acknowledges and is aware that any information generated as a result of the provision of the Services e.g. user information and any reports shall be the property of the Company and the Advertiser. The Company and the Advertiser shall be free to use any data created through the provision of the Services as they think. The Publisher shall not assert any rights of ownership over such data/user information including but not limited to copying, selling, disseminating, transferring or otherwise dealing as owner.

7. Confidentiality and non solicitation

- a. During the terms of this Agreement and for a period of 1 year after termination, 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 (whether in writing or orally) to the Receiving Party by the other party ('Disclosing Party'), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business 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 Receiving Party's obligations under this Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- b. Confidential information does not include information which:
 - i. is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of this clause); or
 - ii. was available to the receiving party on a non-confidential basis before disclosure by the disclosing party; or
 - iii. was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
 - iv. was known to the receiving party before the information was disclosed to it by the disclosing party; or
 - v. the parties agree in writing is not confidential or may be disclosed.
- c. Each party may disclose the other party's confidential information:
 - vi. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12 and obtain confirmation of such compliance in writing; and
 - vii. as may be required by law, court order or any governmental or regulatory authority.
- d. No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement and then strictly on an essential basis only.
- e. Each party shall be responsible for a breach of this clause 7 by any of its representatives.
- f. Each party will inform the other if it becomes aware of a breach of this clause 7 and will work with the other party to secure the return of the information and to prevent any further breaches.
- g. The Company shall be permitted to provide such of the Publisher's information to potential Advertisers as is reasonably necessary. In addition the Company shall be permitted to share tracking count system data with the Advertiser and any third party where such dissemination is in the Company's opinion reasonably necessary.
- h. During the terms of this Agreement (and any subsequent terms) and for a period of 1 year after termination , the Publisher shall not:
 - i. solicit or endeavour to entice away from the Company the business or custom of any Advertiser, or any other website or Email provider that the Publisher become aware of through their dealings under this

Agreement, with a view to providing goods or services to that Advertiser in competition with the Company.

- ii. be involved with the provision of goods or services to (or otherwise have any business dealings with) the Advertiser in the course of any business concern which is in competition with the Company.
 - iii. Introduce the Advertiser to any third party organisation, or in house provider where it would compete with the business of the Company.
- i. For the avoidance of doubt, clause 7 h does not prevent the Publisher from entering into other partnerships with other businesses or agreements with other advertisers.

8. Publisher Warranties and Conditions

a. The Publisher represents and warrants that:

- i. it has full power and authority to enter into and perform its obligations under this Agreement and that performance under this Agreement will comply with all relevant laws, rules and regulations
- ii. that none of the advertising methods it uses or any aspect of the provision of the Services infringes any third party's intellectual property rights and that the use in any way of any materials whatsoever used or provided by the Advertiser, or to which users can link or services and/or products are made available:
 - 1. will not infringe any third party's rights including intellectual property rights ;
 - 2. is not (and does not encourage) defamatory, libellous, obscene, or otherwise unlawful (the Company shall have sole responsibility for determining whether or not such action has taken place);
 - 3. does not violate any applicable law, statute or subordinate legislation;
 - 4. does not, to the best of its knowledge and belief, contain any viruses, Trojan horses, worms, time bombs, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data or personal information;
 - 5. does not collect information that could personally identify a user; and
 - 6. Complies with the terms of this Agreement and uses ethical business practices.
- iii. Where an agent signs this Agreement on behalf of the Publisher that agent has full power and authority to enter into the Agreement on behalf of the Publisher and bind the Publisher to the Agreement. The agent shall remain jointly and severally liable for the obligations under this Agreement.
- iv. The Publisher warrants that it shall inform the Company in accordance with clause 3.d in relation to any special advertising methods.
- v. A breach of any of Clauses 4.a.1-5 shall be treated as a breach of condition and entitle the Company to terminate this Agreement (in their sole discretion) with immediate effect and without any liability in this regard.
- vi. The Publisher shall not enter into direct negotiations with the Advertiser (and/or their respective affiliates, employees, officers, agents, directors and representatives) with regard to any matter relating to this Agreement.
- vii. For the duration of this Agreement and for 12 months following its termination or expiry the Publisher (and/or their respective affiliates, employees, officers, agents, directors and representatives) shall not directly or indirectly solicit, canvas, employ, engage or utilise the services of or provide services to the Advertiser (and/or their respective affiliates, employees, officers, agents, directors and representatives).
- viii. The Publisher shall not enter into any form of negotiations with the Advertiser with the intention of competing with the Company in relation to matters relating to this Agreement.

b. The Company's reasonable opinion shall be final and binding as to whether any of the matters warranted above have been breached.

9. Company Warranties

- a. The Company represents and warrants that :
 - i. it has full power and authority to enter into and perform its obligations under this Agreement and that performance under this Agreement will comply with all relevant laws, rules and regulations
 - ii. Where an agent signs this Agreement on behalf of the Company that agent has full power and authority to enter into the Agreement on behalf of the Company and bind the Company to the Agreement. The agent shall remain jointly and severally liable for the obligations under this Agreement.

10. Indemnity

- a. The Publisher shall indemnify the Company, Advertiser and list providers and their respective affiliates, employees, officers, agents, directors and representatives against all claims, liabilities, costs and expenses (including reasonable legal fees and management time) arising out of:
 - i. breach of the terms of this Agreement;
 - ii. breach of any warranty in this Agreement.
 - iii. the Publisher's failure to comply with all applicable laws and regulations.
- b. The Company shall promptly notify the Publisher in writing of any claim or suit relevant to the above indemnity and subject to clause 10.e the Publisher shall have complete control over any negotiations or litigation and/or the defence or settlement of such suit or claim save that the Publisher shall not settle any claim without the prior authority of the Company.
- c. The Company shall indemnify the Advertiser, and their respective, employees, officers, agents, directors and representatives against all claims, liabilities, costs and expenses (including reasonable legal fees and management time) arising out of:
 - i. material breach of the terms of this Agreement;
 - ii. breach of any warranty in this Agreement.
 - iii. the Company's failure to comply with all applicable laws and regulations.
- d. The Publisher shall promptly notify the Company in writing of any claim or suit relevant to the above indemnity and subject to clause 10.e the Publisher shall have complete control over any negotiations or litigation and/or the defence or settlement of such suit or claim save that the Publisher shall not settle any claim without the prior authority of the Company.
- e. The Company may elect to be involved or have sole control (at its own expense) in the defence of any claim under this clause 10. Any involvement by the Company shall not be treated as a waiver of the Company's rights to be indemnified under this clause 10.

11. Limitation of Liability

- a. **The Publisher understands that the nature of the service provided by the Company is such that the Company requires sufficient protection from potential liability in respect to the provision of online and email advertising. The Company would not be able to offer the agreed rates if these limitations were not in place. As such the Publisher confirms that it acknowledges and agrees that the terms of this clause 11 are fair and reasonable to be included.**
- b. The Parties agree that the terms of this Agreement fairly reflect the agreement between the parties and that both parties have independently considered the terms herein and associated risks in an informed manner.
- c. The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors or Advertisers) to the Publisher (or any third party such as another publisher or network service) in respect of:
 - i. any breach of the Agreement;

- ii. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
 - iii. any failure by the Company to place a campaign.
 - iv. any failure whatsoever by the Advertiser.
- d. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- e. Nothing in these conditions excludes the liability of the Company:
 - i. for death or personal injury caused by the Company's negligence; or
 - ii. for fraud or fraudulent misrepresentation.
- f. Subject to condition 11.e.i and condition 11.e.ii:
 - i. the Company shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits; or loss of business; or depletion of goodwill or similar losses; or loss of anticipated savings; or loss of goods; or loss of contract; or loss of use; or loss or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - ii. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the price paid for the services provided under this Agreement.
- g. For the avoidance of doubt the Company makes no warranty or guarantee as to (and excludes all liability for any loss as a result of) the security of the Company's website, the absence of bugs, viruses or similar, the accuracy or reliability or otherwise of the Campaign and the materials received from the Advertiser. It shall be the responsibility of the Publisher to ensure the quality and performance of any materials received from either the Company or the Advertiser.
- h. Although the Company endeavours to meet agreed delivery dates, the ability of the Company to provide the services contemplated under this Agreement is not always a certainty and as such the Company can only provide the services when they are available, as such the Company shall not be responsible for any delays in the provisions of the services, technical issues affecting the web or Email transmission of the Campaign. The Company's ability to provide the services under this Agreement relies on the ability to procure necessary online access and the Company shall have no responsibility or liability whatsoever if this is delayed.
- i. **The Advertiser shall have the right to contractually pursue the Publisher under the terms of this Agreement as if the Advertiser were a party.**

12. Term and Termination

- a. This Agreement commences once you have indicated your agreement to its terms by clicking the 'acceptance' button on the confirmation email that is sent to you. Clicking on the acceptance button will confirm that you have read, understood and agree to abide by this Agreement.
- b. Subject to clause 12.c, either party may terminate this Agreement on 24 business hours (business hours meaning 9:30 to 17:30 Monday to Friday, not including bank holidays in England and Wales) notice.
- c. When working on a Campaign the Publisher shall be bound by any specific campaign terms that are included in the PO. These terms may provide for a notice period different to that in clause 12.b. In this event the terms of any notice period stated in the PO shall take precedence over the notice period at 12.b.
- d. Without prejudice to any other rights or remedies to which the Company or the Advertiser may be entitled the Company or the Advertiser may terminate and/or suspend this Agreement (and the Publisher's ability to be involved in any new campaigns) without liability to the Publisher if:

1. the Publisher commits a material breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 2. the Publisher enters into an event of insolvency.
 3. the Publisher ceases, or threatens to cease, to trade; or
 4. there is a change of control of the Publisher; or
 5. any other matter occurs for which the Company feels reasonably justified. The Company shall not be required to give any reason for its decision.
- c. For the avoidance of doubt the Company may suspend or deactivate the Publisher's account if the Publisher has not used the account for over a 1 month period, has a negative Leads credit in their account (and the account has remained in negative credit for over a 1 month period), the Publisher is carrying out any other activity which has or may have a negative effect on the intellectual property rights of the Company or any of the Publisher's intellectual property rights which relate to the Services to be provided are being disputed.
- d. Any payments due to the Publishers under this Agreement may be withheld during any period of suspension under this section 12.
- e. The Advertiser shall have the right under this Agreement to terminate involvement with the Publisher or any of the Publisher's websites, or the Publisher's involvement with an aspect of the Campaign on 7 days written notice. The Company shall have no liability whatsoever in the event of such cancellation.
- f. From the termination of this Agreement, or during any period of suspension, the Publisher shall not be credited for any Leads generated.
- g. On termination:
- i. Any payments due to be made to the Publisher will be made within 90 days (subject to charge backs).
 - ii. In the event the Publisher has a negative credit balance on termination the Publisher shall pay the Company for that negative balance within 30 days (subject to charge backs).
 - iii. Any rights in relation to using property belonging to the other party (or the Advertiser) shall cease immediately and the Publisher shall remove any reference to the Company or the Advertiser from their website.

13. Notices

- a. Any notice under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the PO, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the PO or via Email to an Email address nominated by each party. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender). A notice by Email will be deemed received at the time it is received provided a delivery report was requested.

14. Relationship Between the Parties

- a. Nothing in this Agreement is intended to create a partnership or legal relationship of any kind that would impose liability on one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall make representations, act in the name of, on behalf of or otherwise bind the other party.
- b. Each party is to be treated as an independent contractor

15. Third Party Rights

- a. The Advertiser shall be permitted to enforce any of the obligations of the Publisher under this Agreement. Further the Advertiser shall be permitted to take direct action under the terms of the Agreement for any loss that they suffer as a result of the Publisher breaching any term of this Agreement.

16. Force Majeure

- a. Neither party shall have liability to the other under the Agreement, provided it gives the other party reasonably prompt notice given the conditions, if it is prevented from, or delayed in, performing its obligations under the Agreement (save in relation to payment obligations) or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control and efforts, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company 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 sub-contractors (including the failure of the Company's network resulting in the failure to place a Campaign),

17. Assignment

- a. The Publisher shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- b. The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

18. Marketing & Communications

- a. The Publisher permits the Company to use the Publisher's name in any marketing materials or client lists. Should the Company wish to use the Publisher's logo, or the Publisher's name for any other purpose then it must first obtain the Publisher's approval.

19. Entire Agreement

- a. This Agreement (and PO) constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- b. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this agreement.
- c. The terms of this Agreement prevail over the PO and the terms of this Agreement will only be amended if a supplementary addendum has been prepared, signed by both Parties and attached to this Agreement.

20. Severance

- a. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- b. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

21. Waiver

- a. A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- b. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

22. Governing Law and Jurisdiction

- a. The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- b. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

23. Counterparts

- a. This agreement may be executed in any number of counterparts, each of which shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. A faxed copy of this MSA shall be treated as an original.