



# ADVERTISING TERMS & CONDITIONS

PLEASE READ THE FOLLOWING NOTES AND CONDITIONS CAREFULLY AS THE CONDITIONS WILL FORM THE BASIS OF THE CONTRACT FOR ADVERTISING IN THE DIGITAL DIRECTORY. YOU SHOULD ONLY SIGN THE ADVERTISEMENT CONTRACT IF THE CONDITIONS ARE ACCEPTABLE TO YOU.

## 1. The Contract

1.1 When you order Services from us, you enter into a Contract with us. The Contract is made up of:-

1.1.1 Advertising Contract - ( written, electronic or verbal [recorded] )

1.1.2 These Conditions

In the case of conflict between any of these documents, priority shall be given in the order in which they appear above. 1.2 The Contract applies to the exclusion of all other written or verbal representations, statements or understandings. 1.3 Except as expressly provided for in these Conditions none of our employees or agents have authority to agree any change to a Contract.

## 2. Definitions

2.1 In these Conditions

2.1.1 "Advertisement" means the advertisement referred to on the Advertisement Contract.

2.1.2 "Advertisement Contract" means either an electronic communication which you complete and submit to us or a written contract or a verbal contract which is recorded, under which you offer to purchase Services from us.

2.1.3 "Amendment" means a change to the Content of an Advertisement.

2.1.4 "Artwork" means material suitable for our production purposes and containing the Content of an Advertisement.

2.1.5 "Classification" means a section of a Directory in which the Advertisements and Unpaid Entries are to be published and which is relevant to the trade or profession described in the heading used for that Classification.

2.1.6 "Conditions" means these contractual conditions.

2.1.7 "Content" means any and all of the text, graphics, images, logos, photographs, layout, design, shading and colouration constituting or intended to be included in an Advertisement.

2.1.8 "Contract" means a contract between you and us as described in Condition 1.1. Each Advertisement and the production of each piece of Artwork shall be treated as the same Contract.

2.1.9 "Directory" means any directory published by us into which you wish Advertisements to be inserted.

2.1.10 "Final Amendment Date" means the latest date by which you may request an Amendment, which date is shown in the Confirmation of Order sent to you, or otherwise notified to you from time to time. We may change the Final Amendment Date on reasonable grounds.

2.1.11 "Financial Services Regulatory Regime" means the regime (regulated by the Financial Services Authority pursuant to the Financial Services and Markets Act 2000 and other laws) which governs the conduct of business and the advertising and promotion of financial products and services.

2.1.12 "Order Changes" means a change either to the Advertisement size, Artwork, Classification or the Directory edition in which an Advertisement is to appear. An Order Change may result in a change to the price of the Advertisement.

2.1.13 "Promotional Advertisement" means an advertisement type made available by us as part of a promotional offer or at a discounted rate.

2.1.15 "Proprietary Material" means any of your (or a third party's) copyright material, brand names, trade or service marks, devices or logos.

2.1.16 "Services" means the services to be performed by us in accordance with a Contract for the insertion of Advertisements into the Digital Directory.

2.1.17 "Unpaid Entries" means the discretionary entries included in Directories and more particularly described in Condition 14.

2.1.18 "us" means Digital Directories LLP, our Registered Office is at 26 Portland Road, Kilmarnock, East Ayrshire, KA1 2EB; and "we" and "our" has a corresponding meaning.

2.1.19 "you" means the person, company or other organisation (named on the Advertisement Contract as the customer) who offers to purchase one or more Services or a person, company or other organisation who or which enters into a Contract with us for the provision of Services; "you" and "yours" shall have a corresponding meaning.

2.2 Words denoting the singular include the plural and vice versa.

2.3 The headings in these Conditions are for convenience only and shall not affect the interpretation.

2.4 Reference to any statute or statutory provision includes reference to the statute or statutory provision as from time to time amended, extended or re-enacted.

2.5 Notices that are required to be "in writing" or "written", can be given by email with the express permission of "us".

### **3. Commencement**

3.1 Unless otherwise agreed or provided for by law, your Contract shall not come into existence until:

3.1.1 In the case all Advertisements, both parties have either electronically signed, conventionally signed or verbally agreed (and having been recorded) to the Advertisement Contract

### **4. Amendments & Cancellations**

#### **4.1 Amendment**

4.1.1 Except in the case of Promotional Advertisements, you may request one (1) Amendment. Promotional Advertisements may be restricted in availability to certain Classifications, Directories and advertisement sizes and types. In the case of Promotional Advertisements, you will only be permitted to request changes to Content in accordance with this Condition

4.1.2 Subject to Condition 4.1.4, you must make requests for Amendments as follows:

a. in writing on your own business stationery to us at the address shown on the Advertisement Contract;

b. by amending, signing and returning a proof sent to you by us within the time limits imposed by the Contract.

4.1.3 If practicable prior to the Final Amendment Date, we will issue to you a note confirming receipt and giving details of the Amendment. You should check the details carefully and should advise us immediately of any errors or omissions.

4.1.4 You may elect to telephone a request for an Amendment before the Final Amendment Date to our Customer Service telephone number. If you do this, or request an Amendment through our sales representative, we will not accept any liability for the accuracy of the subsequently amended Advertisement and we may decline to accept the Amendment.

## 4.2 Cancellation by You

4.2.1 Except where you have a statutory right or within the Distance Selling Cooling Off Period (only applicable if your ad has been sold to you over the phone) or as provided in Condition 4.2.2, you shall not have the right to cancel a Contract.

4.2.2 If we Change our Contract with you, or if Digital Directories LLP ceases to trade your contract and your legal obligations to that contract will end.

## 4.3 Amendment by us

4.3.1 We may change these Conditions at any time. A change will be effective immediately upon publication of the modified Conditions.

4.3.2 We have a policy of continuously improving our products and services. We may change any aspect of the Service from time to time. Such changes may include the area of coverage and distribution of Directories; the title, font, format, type, look and feel and/or size of any Directory; our advertisement policies; the range of available Advertisement types and the Classification and Classification headings and search facilities used in Directories. If we reasonably consider that such a change is likely to have a serious detrimental financial effect on you, then we will notify you of such change but shall not otherwise be obliged to inform you.

## 4.4 Cancellation by us

4.4.1 We may (without affecting any other right or remedy we may have) remove any Advertisement or refrain from proceeding with any other Advertisement you have ordered and/or refuse any further Advertisement ordered without penalty and with immediate effect if:

4.4.1.1 you fail to pay when it is due any sum payable under any agreement between you and us, and such sum remains outstanding;

4.4.1.2 you commit a material breach of any provision of the Contract, or a series of breaches which, when taken together, amount to a material breach of the Contract, unless in the case of a breach which is capable of remedy you have remedied the breach or breaches within fourteen (14) days of receiving request to do so.

4.4.1.3 you cease or threaten to cease to carry on business or are unable to pay your debts as they fall due;

4.4.1.4 if you are a limited company, you convene a meeting of your creditors or a resolution is passed or proposed for your voluntary winding up or a petition for your compulsory winding up is presented or proposed; if you are a person, firm or a partnership, you, or any one of you, convene a meeting of your creditors or a resolution is passed or proposed for an individual voluntary arrangement for you or any one of you, or a petition for your, or any one of your, bankruptcy is presented or proposed;

4.4.1.5 an administrator, receiver, manager or supervisor of a composition or scheme is appointed or applied for by you or any one of you;

4.4.1.6 you fail to provide Content that is compliant with your obligations set out in Condition 7.2; or you fail to approve a proof sent to you as required for a specific product;

4.4.1.7 you breach Condition 12.1.

4.4.1.8 you are the subject of a receiving order in bankruptcy (or in Scotland are sequestrated or in Northern Ireland are adjudicated bankrupt) or suffer execution, distress, any form of diligence or seizure to be levied or effected on or against your premises, assets or effects;

4.4.2 We may cancel any Contract (in whole or in part) without penalty by giving you not less than seven (7) days' notice in writing, to expire at any time before the proposed publication date of the Directory concerned.

4.4.3 We may (without affecting any other right or remedy that we may have) suspend or refrain from processing your request for renewal of an Advertisement Order if you fail to pay any instalment or payment demanded by us from you. When or if all payments due are received by Digital Directory as cleared funds prior to the proposed publication date of the relevant Directory we may, without notification to you, recommence processing of the relevant Advertisement Contract. We are neither responsible nor liable for our failure to process your Advertisement Contract or publish your Advertisement in the above circumstances.

## 5. Charges and Payment

5.1 The charge for each Advertisement (or the total charge for a number of Advertisements) shall be that set out on the respective Advertisement Contract. If a reduction is shown in respect of a promotional offer and you continue to meet all the terms of eligibility relating to that promotional offer then the charge shall be reduced by the amount shown but not otherwise. Terms of eligibility for promotional offers will be made available by us on request.

5.2 Unless otherwise agreed in writing, payment shall become due and payable from you five (5) days from date of invoice by bank transfer. If we do not receive payment within five (5) working days we can take a credit card payment. You will have the right to choose which payment method to use but will have to honour that method.

5.3 If you fail to comply with any of the Conditions, you will still continue to be liable for all charges due and to become due.

5.4 It is your responsibility to read or ask for sight-of these terms & conditions before signing the Advertising Contract. We are not obliged to offer you access to these terms & conditions before signing any Advertising Contract.

## 6. Our Obligations

6.1 We will, subject to these Conditions:

6.1.1 subject to Condition

6.1.2, publish the applicable Advertisements within the appropriate Heading in the appropriate Directories;

6.1.2 produce the Artwork if ordered by you pursuant to the Contract; and

6.1.3 distribute the Directories.

6.2 In respect of production of Artwork

6.2.1 we grant you dual licence to use Artwork in the Advertisements for publication in Directories published by us.

6.2.2 we will ensure that Artwork will be available in sufficient time for inclusion in the Advertisement and will be suitable for our production processes.

6.3 We do not give any warranty, condition or undertaking whatsoever as to the duration of the lifetime of any Directory.

## 7. Your Obligations

7.1 Materials to be provided

7.1.1 You shall supply to us, whenever appropriate, such materials as may be required by us to publish the Advertisement. Such materials must be of a quality suitable for our use and must be delivered to a designated location in sufficient time to suit our production requirements for each Directory concerned. We do not undertake to return any materials supplied by you or any media on which they were originally supplied to us.

7.1.2 We shall not be obliged to publish any Advertisement for which you have failed to provide the materials at the correct time or have provided materials of an unsuitable quality. If we do publish such an Advertisement, we will do so based on the information available to us at the Final Amendment Date and we will have no liability to you in respect of the published Advertisement.

7.2 Content

7.2.1 You shall comply in all respects with the provisions of all statutes and statutory instruments applicable to any Advertisement intended for publication in a Directory, including (without limitation) the Trade Description Act 1968, the Consumer Credit Act 1974, Local Government (Miscellaneous Provisions) Act 1976, the Surrogacy Arrangements Act 1985, Financial Services and Markets Act 2000 ("FSMA"), FSMA (Financial Promotion) Order 2005 and the Consumer Credit (Advertisements) Regulations 2004.

7.2.2 You shall comply in all respects with:

a. the British Code of Advertising, Sales Promotion and Direct Marketing;

b. any and all guidance, codes or other regulations made available by any competent authority having jurisdiction over or responsibility for the regulation of advertising, including, without limitation, Ofcom, the Independent Committee for the Supervision of Telephone Information Services, or the Advertising Standards Authority; and

c. our advertisement policies, which are available on request, current, in all cases, as at the Final Amendment Date applicable to an Advertisement.

7.2.3 If your activities, conduct, advertising or promotion fall within the Financial Services Regulatory Regime, you must:-

a. provide and sign a Credit and Financial Services Advertising Customer Declaration ("CFSA Customer Declaration"), fully comply with the additional terms and conditions on the CFSA Customer Declaration.

7.2.4 You hereby agree, undertake and warrant that if you place an Advertisement Order or otherwise request publication of any Content which consists of or includes a financial promotion (other than a financial promotion to which an exemption under the FSMA (Financial Promotion) Order 2005 applies), you will ensure that, prior to the proposed date of publication, the final Content of each such Advertisement will have been approved in writing for publication in the

relevant Directory for the purposes of s21 of FSMA by a person authorised by the Financial Services Authority.

7.2.5 If you place an Advertisement Order or otherwise request publication of any Content which consists of or includes anything within the Financial Services Regulatory Regime, within seven days of a request from us, you must provide or arrange the provision of:

- a. proof that you are authorised by the Financial Services Authority or that you are an appointed representative as indicated in the customer declaration; and
  - b. a certified copy of the authorised person's written approval as required by Condition 7.2.4 or
  - c. an explanation of the applicable exemption or other reason why s21(1) of FSMA does not apply.
- We may make such a request any time after submission of your Advertisement Order, until 24 months after the publication date of the relevant Directory.

7.2.6 You hereby agree, undertake and warrant that if you place an Advertisement Order or otherwise request publication of any Content which consists of or includes content governed by the Consumer Credit (Advertisements) Regulations 2004 ("CCAR"):

- a. you hold any credit licence as may be required pursuant to the Consumer Credit Act 1974;
- b. the final Content to be published by us complies in each and every respect with the CCAR and any amendments, re-enactments or substitutions in force as at the proposed date of publication and has been certified as compliant and suitable for publication in a Directory by a person of appropriate expertise; and
- c. any Annual Percentage Rate ("APR"), including any typical APR, in the Content:
  - i. has been calculated, as at the proposed date of publication, in accordance with the provisions of the CCAR and any amendments, re-enactments or substitutions in force; and
  - ii. has been certified as correct and suitable for publication in a Directory in writing by a person of appropriate expertise such as your auditor, compliance officer or chartered accountant.
- d. you will notify us immediately if you become aware of any event or matter occurring between the date the CFSA Customer Declaration is submitted to us and the publication date shown on the CFSA Customer Declaration which causes, or could cause, the publication of the Content or any part of the Content to constitute an offence under s46(1) and/or s47(1) of the Consumer Credit Act 1974.

7.2.7 Further if you place an Advertisement Order or otherwise request publication of any Content which consists of or includes content governed by the CCAR, within seven days of a request from us, you will provide or arrange the provision of:

- a. proof that you are licensed by the Office of Fair Trading in accordance with Condition 7.2.6(a);
- b. a certified copy of the certificate of compliance in accordance with Condition 7.2.6(b); and/or
- c. a certified copy of the calculations carried out in accordance with Condition 7.2.6(c)(i) and the written certification in accordance with Condition 7.2.6(c)(ii).

We may make such a request any time after submission of your Advertisement Order, until 24 months after the publication date of the relevant Directory.

7.2.8 Even though a Contract is in place between you and us, we may refuse to publish any Advertisement or any part thereof where:

- a. we consider that the Content is contrary to or infringes the terms of any law or the right or privilege of any person or that it may mislead members of the public or that members of the public might find it offensive prejudicial or inflammatory or that it is likely to subject us to prosecution, criticism or embarrassment; and or
- b. you have failed to provide any information or document requested by us pursuant to Condition 7.2.5 and/or Condition 7.2.7;
- c. you have notified us that the publication of Content submitted with a CFSA Customer Declaration may constitute an offence under s46(1) and/or s47(1) of the Consumer Credit Act 1974 pursuant to Condition 7.2.6(d) and you fail to provide suitably amended, and (where relevant) certified, Content within the time specified by us or where such notification has been given in insufficient time to enable us to process any amendment to the Content before publication.

7.2.9 We reserve the right to delete any Proprietary Material from an Advertisement where we have reasonable grounds to believe that the owner or controller of such Proprietary Material has withheld or withdrawn permission for your use of the same. In these circumstances, deletion shall not be deemed to be a breach of our obligations under the Contract.

7.2.10 You warrant that, where any Advertisement contains indications, offers and promotions that are time sensitive including, by way of example and not by way of limitation, prices, those indications, offers and promotions will be presented in a way so as not to mislead users of the Directories concerned.

7.2.11 We may provide a copy of your Advertisement or Artwork to the Advertising Standards Authority or any successor or similar competent body as we see fit, to determine whether such Advertisement or Artwork is suitable (from a regulatory perspective) for publication in a Directory. You consent to such disclosure.

7.4 If you make any change to your business name, address, telephone number, authorised representative or legal status, you must promptly notify us in writing on your own business stationery.

#### **8. Limitation of Liability**

8.1 We do not exclude or limit our liability for death or personal injury resulting from our own negligence, or for fraudulent misrepresentation.

8.2 Save as provided in Condition 8.1, we shall not be liable, to the maximum extent permitted by applicable law, for any of the following losses or damage (whether arising in contract, tort (including negligence), strict liability or otherwise and whether such losses or damage were foreseen, foreseeable, known or otherwise):

8.2.1 loss of revenue;

8.2.2 loss of actual or anticipated profits (including for loss of profits on contracts);

8.2.3 loss of anticipated savings;

8.2.4 loss of business;

8.2.5 loss of opportunity;

8.2.6 loss of goodwill;

8.2.7 loss of reputation;

8.2.8 loss of, damage to, or corruption of data or software;

8.2.9 wasted expenditure; or

8.2.10 any indirect or consequential loss or damage (including, for the avoidance of doubt, where such loss or damage is of the type specified in Conditions 8.2.1 to 8.2.9).

8.3 Except as set out in Condition 8.1 above, and subject to Condition 4.1.4, if we make an error in or omission from, or of, an Advertisement you shall be entitled to a refund of such part (not exceeding the whole) of the charge for the Advertisement concerned as is fair and reasonable having regard to the nature of the error or omission. If we make a serious error or omission (which we shall determine, at our sole discretion), we may, in addition to giving a refund, publish or arrange the publication of a similar correct Advertisement free of charge in the next edition of the Directory concerned.

8.4 If a third party disputes your right to use Artwork in accordance with the licences at Condition 6.2.1, we shall either produce or arrange the production of replacement Artwork for your future use or, if you choose, refund to you any payments made pursuant to the Contract in respect of the Artwork unless we produced the Artwork according to your direction or from references supplied by you, in which case, we will have no liability to you.

**9. Proofing** We may provide you with a proof of all Advertisements prior to publication. However, we do not guarantee that such proofs will be provided. Where time does not permit the issue of proofs the Advertisement will be published in accordance with the relevant Content details provided by you and such publication will be taken to satisfy our obligations.

#### **10. Layout of Advertisement and Directories**

10.1 Our policy in relation to position of Advertisements within a Heading is available on request. We may change our Policy from time to time and at any time in our sole discretion and without notice. We guarantee a single page for any PAID Advertisement appearing within a Directory or within a Heading in a Directory.

10.2 An Advertisement may, at our sole discretion, be published at the contracted price in a different style or size of typeface from that requested by you if the style or size of typeface specified does not conform with the typefaces used by us for the printing of the relevant Directory.

**11. Indemnity** You shall, automatically and fully indemnify us against any losses and/or liabilities in relation to any proceedings, claims, demands, damages, fines, costs, expenses and charges, which are incurred or suffered by us or our employees or agents arising out of your conduct, including, but not limited to, any breach of the Contract.

#### **12. Warranty as to Trade Marks and other Intellectual Property Rights**

12.1 You confirm and warrant that you have been and are duly authorised by the owner to use (or that you are the owner of) all Proprietary Materials and other matter incorporated into Advertisements which is protected by any intellectual property right.

12.2 We may, prior to publishing your Advertisements, disclose to the owner of any Proprietary Material to be incorporated into Advertisements, your intention to incorporate such materials; and

to any statutory body, having the authority over the content or appearance of Advertisements, your intention so to advertise.

### **12.3 You hereby consent to:**

12.3.1 disclosure as provided for in Condition 12.2; and

12.3.2 the use and retention of such materials for our internal processes in the business of publishing Directories, monitoring advertising content from time to time and providing information services to third parties via such of our products and services as we make available from time to time in addition to Directories.

**13. Intellectual Property Rights in the Advertisement** Except where stated elsewhere in these Conditions, all intellectual property rights (including copyright) created by us in connection with a Contract (including any and all rights in Artwork) shall unconditionally vest in us and remain our property.

**14. Unpaid Entries** At our absolute discretion, we may offer businesses, an unpaid line entry within the available Classification of that business's choice in the Directory appropriate to the address at which that business operates ("Unpaid Entry"). Such Unpaid Entry may be offered to you but the provision of an Unpaid Entry is not made pursuant to a Contract or any other agreement. A lineage type Advertisement which is the subject of a Contract between you and us may cause an Unpaid Entry in the same Classification to be overwritten.

### **15. Price of Directories**

15.1 As far as is reasonably possible, Digital Directory DVD Roms are distributed free of charge in the United Kingdom.

15.2 In addition to this free distribution at least one thousand (1000) copies of each Digital Directory edition will be made available for sale and offered at the price of £25.00 per copy excluding post and packing.

### **16. Force Majeure**

We shall not be liable in respect of any breach of any Contract due to any cause beyond our reasonable control.

### **17. Notices**

17.1 Any notice or other communication required to be given or served for the purposes of a Contract except where otherwise provided shall be in writing and shall be taken to have been duly given and served if sent by post or delivered by hand.

17.2 Your address for service shall be the address shown as such on the Advertisement Order or an address notified to us by you as an address to which bills may be sent or your usual or last known place of abode or business or, if you are a limited company, your last known registered office.

17.3 Our address for service shall be our registered office at: 26 Portland Road. Kilmarnock. East Ayrshire. KA1 2EB.

**18. Rights of Third Parties** A person who is not a party to a Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of that Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**19. Unsolicited Goods and Services Act 1971** Any Advertisement Contracts that require the inclusion of your Advertisement or other details in a database may constitute an entry in a directory within the meaning of Section 3 of the Unsolicited Goods and Services Act 1971. The Advertisement Contract shall be construed as the note of agreement required by Section 3 of that Act.

### **20. General**

20.1 You shall not assign or otherwise dispose of all or any of your rights or obligations under any Contract without obtaining our prior written consent.

20.2 Failure of either party to assert its rights in relation to any breach of any Contract shall not constitute a waiver of such rights, nor will any such waiver be implied.

20.3 Each provision of these Conditions shall be read separately and shall be severable from these Conditions. If any provision of these Conditions (or portion thereof) is invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of these Conditions will not be affected.

20.4 We may disclose to third parties any address at which you conduct business and which is known to us, whether or not the same is published in Advertisements. You consent to such disclosure.

20.5 At our sole discretion we accept requests to process Advertisement Contracts by electronic means and other technologies (whether now known or invented in future) provided always that you fully comply with our guidance and instructions applicable to those processes. Digital Directories LLP is neither liable to you, nor responsible for: (1) incomplete, lost, garbled, or misdirected

Advertisement Contracts; or (2) your failure to fully comply with guidance and instructions issued by us.

21. **Applicable law and Jurisdiction:** The Contract shall be governed by the laws of Scotland and the Courts of Scotland shall have exclusive jurisdiction to hear disputes arising out of the Contract.  
**Effective 4th August 2009**