

BUSINESS TO BUSINESS – SUPPLY OF SERVICES

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE

1. Interpretation

1.1 Definitions:

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 Customer for the supply of the Services in accordance with clause 5.
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 11.6.
Contract:	the contract between 365TRIBE LTD and the Customer for the supply of Services in accordance with these Conditions.
Customer:	the person or firm who purchases Services from 365TRIBE LTD.
Customer Default:	has the meaning set out in clause 4.2.
Deliverables:	the deliverables set out in the Order produced by 365TRIBE LTD for the Customer.
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 any jurisdiction.
Order:	the Customer's order for Services as set out in the Customer's purchase order form or the Customer's acceptance of 365TRIBE LTD's quotation.
Services:	the services, including the Deliverables, supplied by 365TRIBE LTD to the Customer as set out in the Specification.
Specification:	the description or specification of the Services provided in writing by 365TRIBE LTD to the Customer.

Data Protection Legislation:

the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when 365TRIBE LTD issues acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by 365TRIBE LTD, and any descriptions or illustrations contained in 365TRIBE LTD's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

3. Supply of Services

- 3.1 365TRIBE LTD shall supply the Services to the Customer in accordance with the Specification in all material respects.

- 3.2 365TRIBE LTD shall use all reasonable endeavours to meet any performance dates specified in the Specification], but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 365TRIBE LTD 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 shall notify the Customer in any such event.
- 3.4 365TRIBE LTD warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

- 4.1 The Customer shall:
- (a) Ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - (b) Co-operate with 365TRIBE LTD in all matters relating to the Services;
 - (c) Provide 365TRIBE LTD with such information and materials as 365TRIBE LTD may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (d) Obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - (e) Comply with any additional obligations as set out in the Specification;
- 4.2 If 365TRIBE LTD's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation:
- (a) 365TRIBE LTD shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays 365TRIBE LTD's performance of any of its obligations;
 - (b) 365TRIBE LTD shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from 365TRIBE LTD's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (c) the Customer shall reimburse 365TRIBE LTD on written demand for any costs or losses sustained or incurred by 365TRIBE LTD arising directly or indirectly from the Customer Default.

5. Charges and payment

- 5.1 Condition 5.2 shall apply if the Services are to be provided on a time-and-materials basis. Condition 5.3 and condition 5.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 5 shall apply in either case.
- 5.2 Where the Services are provided on a time-and-materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with 365TRIBE LTD's standard daily fee rates as amended from time to time;
 - (b) 365TRIBE LTD's standard daily fee rates (as published from time to time) are calculated on the basis of an eight-hour day worked between 9am and 5pm on weekdays (excluding weekends and public holidays);
 - (d) 365TRIBE LTD shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this agreement. Each invoice shall set out the time spent and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 5.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Specification. The total price shall be paid to 365TRIBE LTD in instalments as set out in the Specification. All amounts due under this agreement shall be paid by the Customer to 365TRIBE LTD in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). 365TRIBE LTD shall invoice the Customer for the charges at each relevant stage, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 5.4.
- 5.4 Any fixed price contained in the Specification excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and] the cost of any materials or services reasonably and properly provided by third parties required by 365TRIBE LTD for the supply of the Services. Such expenses, materials and third party services shall be invoiced by 365TRIBE LTD at cost; and
 - (b) VAT, which 365TRIBE LTD shall add to its invoices at the appropriate rate.
- 5.5 The Customer shall pay each invoice submitted to it by 365TRIBE LTD in full, and in cleared funds, within [30] days of receipt.
- 5.6 Without prejudice to any other right or remedy that 365TRIBE LTD may have, if the Customer fails to pay on the due date 365TRIBE LTD may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (b) suspend all Services until payment has been made in full.

- 5.7 Time for payment shall be of the essence of the Contract.
- 5.8 365TRIBE LTD may, without prejudice to any other rights it may have, set off any liability of the Customer to 365TRIBE LTD against any liability of 365TRIBE LTD to the Customer.

6. Intellectual property rights

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by 365TRIBE LTD.

- 6.1 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence during the term of the Contract.
- 6.2 The Customer shall not sub-license, assign or otherwise transfer the rights granted in this clause 6.
- 6.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7. Limitation of liability

- 7.1 Nothing in the Contract shall limit or exclude 365TRIBE LTD's liability for:
- (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) Fraud or fraudulent misrepresentation; or
 - (c) Any other liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to clause 7.1, 365TRIBE LTD shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of damage to goodwill; and
 - (g) any indirect or consequential loss.
- 7.3 Subject to clause 7.1, 365TRIBE LTD's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.

7.4 This clause 7 shall survive termination of the Contract.

8. DATA PROTECTION

8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause 8, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.

8.3 Without prejudice to the generality of Clause 8.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.]

8.4 Without prejudice to the generality of Clause 8.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:

- (a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

- (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;]
 - (f) notify the Customer without undue delay on becoming aware of a personal data breach;
 - (g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and]
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 8 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 8.6 Either party may, at any time on not less than 30 days' notice, revise this Clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

9. Termination

- 9.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party [1 months'] written notice.
- 9.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) The other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) The other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) The other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) The other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
 - (e) Any monies paid for services not yet provided at date of termination will be repaid (pro-rated over the 24 month period). And this will apply if 365TRIBE LTD or the Customer serve this notice.
- 9.3 Without limiting its other rights or remedies, 365TRIBE LTD may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any

amount due under the Contract on the due date for payment and remains in default not less than [14] days after being notified to make such payment.

10. Consequences of termination

On termination of the Contract for any reason:

- (a) The Customer shall immediately pay to 365TRIBE LTD all of its outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, 365TRIBE LTD shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) The Customer shall return all of any Deliverables which have not been fully paid for.
- (c) The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) Clauses which expressly or by implication survive termination shall continue in full force and effect.

11. General

11.1 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.

11.2 Assignment and other dealings

- (a) 365TRIBE LTD may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of [365Tribe Ltd], assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

11.3 Confidentiality

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) 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 11.3; and

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

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

11.4 **Entire agreement**

11.5 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.6 **Variation**

365TRIBE LTD may revise these terms and conditions at any time and shall notify the Customer in any such event.

11.7 **Waiver**

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.

11.8 **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.

11.9 **Notices**

(a) Any notice given to a party under or in connection with this contract shall be in writing from a Customer or 365TRIBE LTD domain email address. And it would be deemed served within 4 hours provided there is no bounceback or notice of non-transmission.

(b) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include email.

11.10 **Third parties**

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

11.11 **Governing law**

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

11.12 **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.