

PROFESSIONAL SERVICES AGREEMENT

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Business Day: any day (other than a Saturday or Sunday) when banks are generally open for normal business in London.

Client: the person, firm or company who purchases the Services from MBG

Client Materials: any content or materials provided to MBG by the Client from time to time in connection with the Services.

Confidential Information: all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

Contract: any contract between the Client and MBG for the supply of Services in accordance with these terms and conditions and any applicable Statement of Work or Proposal.

Created Materials: any original text, document, photograph, video content, character, music, sound recording, performance, book, painting, software, website, app or any other material which is created by (or commissioned from third parties by) MBG and supplied to the Client as part of the Services.

Intellectual Property Rights: all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, trade names, patents, utility models, design rights, semiconductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

MBG: Media Blaze Group Limited, which includes the following agencies: Tinderbox Video, Lion Digital, Mediablaze and Mediablaze Live.

Project: any project or piece of work which is described in a Statement of Work or a Proposal.

Proposal: any document prepared by MBG and agreed between the parties (where a Statement of Work is not in place) which sets out details of Services.

Services: the services to be provided pursuant to this Agreement.

Statement of Work: any document prepared by MBG and agreed between the parties which sets out details of the Services.

Third Party Materials: any text, document, photograph, TV programme, feature film, character, music, sound recording, performance, book, painting, software or any other material not owned by MBG or the Client.

1.2 Clause and schedule headings do not affect the interpretation of this Agreement.

1.3 References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this Agreement.

1.4 Words in the singular include the plural and in the plural include the singular.

1.5 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.6 References to **including** and **include(s)** mean respectively including without limitation and include(s) without limitation.

1.7 **Writing** or **written** includes faxes and email.

2 THE CONTRACT

2.1 The terms of this Agreement shall apply to all Services described in Statements of Work or Proposals as are from time to time agreed between the Client and MBG (unless otherwise agreed in writing). These terms prevail over any other terms and conditions contained or referred to in any order, letter, form of contract or other communication originating from the Client.

2.2 If the terms of this Agreement and the terms of the applicable Statement of Work or Proposal are inconsistent, the terms of the Statement of Work or Proposal shall prevail.

3 PROVISION OF THE SERVICES

3.1 MBG shall supply the Services in accordance with the applicable Statement of Work or Proposal.

3.2 MBG shall endeavour to meet any deadlines specified in the applicable Statement of Work or Proposal, but any such dates shall be estimates only and shall not be of the essence for the performance of the Services.

3.3 MBG shall have the right to sub-contract any part of the Services to any third party provided that it notifies the Client before instructing any such sub-contractor.

4 CLIENT RESPONSIBILITIES

4.1 The Client acknowledges that MBG's ability to provide the Services is dependent upon the full and timely co-operation of the Client (which the Client agrees to provide), as well as the accuracy and completeness of the specifications and instructions provided by the Client and any information, data and materials the Client provides to MBG.

4.2 In accordance with clause 4.1 above, the Client shall provide MBG with access to, and use of, all information, data and materials reasonably required by MBG for the performance by MBG of its obligations under this Agreement.

4.3 The Client shall be responsible for the accuracy and completeness of the Client Materials in accordance with clause 6.3.

4.4 If MBG's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("**Client Default**"):

4.4.1 MBG shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays

MBG's performance of any of its obligations;

4.4.2 MBG shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from MBG's failure or delay to perform any of its obligations as set out in this clause 4.4; and

4.4.3 the Client shall reimburse MBG on written demand for any costs or losses sustained or incurred by MBG arising directly or indirectly from the Client Default.

4.5 The Client shall not, without the prior written consent of MBG, at any time from the date of this Agreement to the expiry of 12 months after the last date of supply of the Services solicit or entice away from MBG or employ or attempt to employ any person who is, or has been, engaged as an employee of MBG in the provision of the Services.

5 CHARGES AND PAYMENT

5.1 The Client shall pay the Charges as set out in the applicable Statement of Work or Proposal or, if not set out in the Statement of Work or Proposal, at the rates set out in MBG's rate card in place at the time the Services are provided. The Client acknowledges that the Charges and other relevant terms may need to be renegotiated where:

5.1.1 the Client amends its instructions or the scope of part or all of the Services set out in the Statement of Work or Proposal; or

5.1.2 the Client wishes to use the Created Materials in a way or for a purpose not expressly permitted by this Agreement or the applicable Statement of Work or Proposal.

5.2 MBG shall invoice Client on the dates or upon the milestones set out in the Statement of Work or Proposal. If no dates for invoicing are set out in the Statement of Work or Proposal, then MBG shall invoice the Client for any Charges monthly in arrears (unless otherwise agreed in writing).

5.3 The Client shall pay each invoice submitted by MBG in full and in cleared funds in pounds sterling to a bank account nominated in writing by MBG within 30 days of the date of the invoice. Time for payment shall be of the essence of the Contract.

- 5.4 All amounts payable by the Client for the Services are exclusive of amounts in respect of value added tax chargeable for the time being (“VAT”). Where any taxable supply for VAT purposes is made by MBG to the Client, the Client shall, on receipt of a valid VAT invoice from MBG, pay to MBG such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.5 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). MBG may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by MBG to the Client.
- 5.6 MBG reserves the right to charge interest on all invoices presented to the Client which are not paid by the applicable due date at the annual rate of 4% above the base rate from time to time of the Bank of England. Such interest will accrue on a daily basis from the date on which payment became overdue up to the date on which MBG receives the full outstanding amount together with all accrued interest, whether before or after judgment.
- 5.7 Without prejudice to any other right or remedy it may have, if the Client fails to pay MBG on the due date MBG may suspend all Services until payment has been made in full.
- 5.8 The parties agreed that MBG may review and increase its standard fee rates as set out in MBG’s rate card at any time, provided that MBG shall give the Client written notice of any increase that may affect the Project before the proposed date of that increase.

6 WARRANTIES AND INDEMNITIES

- 6.1 MBG warrants to the Client that the Services and the Created Materials published or provided pursuant to this Agreement shall be prepared by competent staff with a reasonable standard of skill and care.
- 6.2 MBG warrants that, where the Created Materials are editorial content:

6.2.1 the editorial content will not infringe any applicable laws or regulations and will not consist of material which is obscene, indecent, pornographic, seditious, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing or blasphemous; and

6.2.2 any editorial content which consists of third party materials will be properly licensed for the Client’s use for the purposes for which it was supplied and in accordance with any instructions of MBG.

6.3 The Client warrants to MBG that:

6.3.1 it is authorised to use all Client Material and that the use of the Client Material by MBG in accordance with the terms of this Agreement shall not give rise to any civil or criminal liability or infringe the rights of any third party; and

6.3.2 the Client Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights).

6.4 The Client shall indemnify, defend and hold MBG harmless in respect of all loss, damage and expense arising out of or relating to any breach of the terms of the Contract by the Client.

6.5 This Agreement (and any applicable Statement of Work or Proposal) sets out the full extent of MBG's obligations and liabilities in respect of the supply of the Services. Subject to clause 7.1, all conditions, warranties or other terms concerning the Services which might otherwise be implied into this Agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

7 LIMITATION OF REMEDIES AND LIABILITY

7.1 Nothing in this Agreement shall operate to exclude or limit MBG's liability for:

7.1.1 death or personal injury caused by its negligence; or

- 7.1.2 any breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;
 - 7.1.3 wilful misconduct;
 - 7.1.4 fraud; or
 - 7.1.5 any other liability which cannot be excluded or limited under applicable law.
- 7.2 Subject to clause 7.1, MBG shall not be liable to the Client for any loss of profit, anticipated profit, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 7.3 Subject to clause 7.1, MBG's aggregate liability in respect of claims arising out of or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed the total Charges payable by the Client to MBG for the applicable Project.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Client Materials and any Intellectual Property Rights comprised therein are (and shall remain) the property of the Client, and MBG shall obtain no right and interest therein, save for a royalty-free licence to use the same to the extent necessary or desirable to carry out the Services.
- 8.2 Save where clause 8.3 or 8.4 applies, ownership of the Created Materials (and any Intellectual Property Rights comprised therein) and all other Intellectual Property Rights arising out of or in connection with the Services shall vest in MBG. Subject to payment of the applicable Charges, the Client shall have a sole, royalty-free licence to use the Created Materials for the purpose for which they were supplied by MBG.
- 8.3 Where the Created Materials are video or print advertising material ("**Advertising Material**"), any Intellectual Property Rights comprised therein shall vest in MBG. Subject to payment of the applicable Charges, the Client shall have an exclusive licence to use the Advertising Material for the purpose for which it was supplied by MBG. The Client acknowledges that the applicable Charges will include usage charges as set out in the applicable Statement of Work or Proposal. MBG acknowledges that it may not (i) permit any
- third party to use the Advertising Material or (ii) itself make any use of the Advertising Material except for the purposes of performing the Services or as permitted by clause 8.5.
- 8.4 Where proprietary software of MBG is used in the creation, development and/or operation of the materials supplied by MBG to the Client (including any sub-routines, sub-elements or other generic parts of such software incorporated into the materials supplied by MBG to the Client which constitute the "building blocks" of the underlying code) (the "**MBG Software**"), MBG grants (subject to payment of the applicable Charges by the Client) to the Client a non-exclusive licence to use the MBG Software for the normal operation of the material supplied by MBG and in accordance with any express instructions of MBG. MBG shall obtain, at the Client's cost, all usage rights for the Client in respect of any software owned by a third party used in the creation, development and/or operation of the materials supplied as are deemed necessary by MBG.
- 8.5 Notwithstanding the terms of this clause 8, MBG may make reasonable use of any Created Materials for the purposes of promoting its services.
- 8.6 The Client acknowledges that if (following completion or termination of the Project) it wishes to take ownership or control of the Created Materials or use the Created Materials for a purpose which is not expressly permitted in the Contract, this shall be subject to the agreement of MBG and may be subject to the payment of further charges or licence fees by the Client.
- 8.7 Save as expressly stated in clauses 8.3 and 8.4, the Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of such Intellectual Property Rights may be conditional on the Client obtaining a licence from the relevant rights holder.

9 THIRD PARTY CONTENT

- 9.1 Where the Services consist of MBG publishing or curating content on a website or app, MBG shall monitor material posted by visitors or third parties and use reasonable endeavours to moderate or remove any such content which is posted in breach of the terms of use of the applicable website or

app. In all other cases where MBG creates or hosts a website or app on which visitors or third parties may post material, the Client acknowledges that (unless otherwise agreed in the applicable Statement of Work or Proposal) MBG has no control over any material posted by visitors or third parties and does not purport to monitor the content of the website or app, and the Client agrees that (unless otherwise agreed in the applicable Statement of Work or Proposal) it shall indemnify MBG for any loss or damage which arises as a result of material placed on the website or app by visitors or third parties.

9.2 MBG may include the statement "Designed, developed and published by MBG" on the home page of any website or app it creates for the Client.

10 TERM AND TERMINATION

10.1 Each Project shall continue until it has been completed or it is terminated by either party in accordance with this clause 10.

10.2 The Client may terminate a Project at any time with 90 days' notice, provided that the Client pays all Charges for stages of work commenced by MBG at the date of such notice and all expenses incurred by or on behalf of MBG relating to the Project.

10.3 Either party may terminate a Project immediately at any time by written notice to the other party if:

10.3.1 that other party commits any material breach of its obligations under the Contract which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or

10.3.2 that other party:

- (a) ceases to trade (either in whole, or as to any part or division involved in the performance of this Agreement); or
- (b) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or
- (c) a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or

assets of that party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or

- (d) the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
- (e) any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).

10.4 On termination or expiry of a Project:

10.4.1 the Client shall immediately pay to MBG all of MBG's outstanding unpaid invoices and interest and, in respect of Services supplied or commenced but for which no invoice has been submitted, MBG may submit an invoice, which shall be payable immediately on receipt;

10.4.2 the Client shall promptly return all of MBG's Confidential Information and materials; and

10.4.3 MBG shall provide such assistance as the Client may reasonably request to enable a smooth transition of any website or app from MBG to the Client (or such third party as the Client may nominate) and to minimise unnecessary downtime during the transition period. Such assistance may be subject to additional charges payable by the Client at the rates set out in MBG's rate card in place at the time.

10.5 The following clauses shall survive the end of any Project: clauses 6, 7, 8, 9, this clause 10.5 and 12, together with any other clauses, which by their nature, should survive.

11 FORCE MAJEURE

11.1 MBG shall not be liable in any way for loss, damage or expense arising directly or indirectly from any hindrance, failure or delay in performing any obligation under the Contract caused by the actions or omissions of the Client, its employees, agents, contractors or other third parties providing goods or services to or acquiring them from the Client or by any circumstance beyond MBG's reasonable control, which shall include war (or other action of military forces), terrorism, riot, civil commotion, sabotage, vandalism, accident, breakdown or damage to machinery or equipment, acts of God, fire, flood, severe weather conditions, extreme traffic congestion, strike, lock-out or other industrial disputes (whether or not involving employees of MBG) or shortage of materials at the market rates existing when the relevant Contract is made, legislative or administrative interference or national crisis (each an "Event of Force Majeure"). If an Event of Force Majeure continues for more than a period of 30 days MBG shall be entitled at its discretion to perform, suspend performance of, and/or terminate the Contract.

12 CONFIDENTIALITY

12.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

12.2 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

12.3 The obligations set out in this clause 12 shall not apply to Confidential Information which the receiving party can demonstrate:

12.3.1 is or has become publicly known other than through breach of this clause 12; or

12.3.2 was in possession of the receiving party prior to disclosure by the other party; or

12.3.3 was received by the receiving party from an independent third party who has full right of disclosure; or

12.3.4 was independently developed by the receiving party; or

12.3.5 was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

12.4 The obligations of confidentiality in this clause 12 shall not be affected by the expiry or termination of this Agreement.

12.5 The parties acknowledges that nothing in this Agreement shall affect each party's right to use as it sees fit any general marketing or advertising experience gained in the course of providing or receiving the Services.

13 NOTICES

13.1 A notice given under this Agreement:

13.1.1 shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

13.1.2 shall be sent for the attention of the person, and to the address, fax number or e-mail address as the receiving party may have notified to the other, such notice to take effect five days from the notice being received); and

13.1.3 shall be:

(a) delivered personally; or

(b) sent by fax or e-mail; or

(c) sent by pre-paid first-class post, recorded delivery or registered post; or

(d) (if the notice is to be served or posted outside the country from which it is sent) sent by registered airmail.

13.2 A notice is deemed to have been received:

13.2.1 if delivered personally, at the time of delivery; or

13.2.2 in the case of fax or e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next Business Day; or

- 13.2.3 in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
- 13.2.4 in the case of registered airmail, five days from the date of posting; or
- 13.2.5 if deemed receipt under the previous paragraphs of this clause 13.2 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.
- 13.3 To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number or e-mail address of the relevant party or, in the case of post, that the envelope containing the notice was properly addressed and posted.
- 14 GENERAL**
- 14.1 **Assignment and other dealings.** MBG 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. The Client shall not, without the prior written consent of MBG, 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.
- 14.2 **Entire agreement.** This Agreement and any Statement of Work or Proposal (together the “**Contractual Documentation**”) constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this Agreement
- 14.3 **No warranty or representation.** The parties agree that neither of them has been induced to enter into any Contractual Documentation in reliance upon any warranty, representation, statement, agreement or undertaking of any kind (whether negligently or innocently made) of any person other than as expressly set out in this Agreement as a warranty.
- 14.4 **Variation.** No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 14.5 **Waiver.** A waiver of any right under this Agreement 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. No waiver shall be implied by taking or failing to take any other action.
- 14.6 **Third party rights.** This Agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.
- 14.7 **Cumulative rights.** Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 14.8 **No partnership or agency.** Nothing in the Contract shall constitute a partnership, joint venture, representative or agency relationship between the parties hereto or be construed or have effect as constituting any relationship of employer and employee between the parties. Neither party shall have the authority to bind or pledge the credit of, or oblige, the other in any way without obtaining the other’s prior written consent
- 14.9 **Severance.** If any provision (or part of a 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. 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.
- 14.10 **Governing law and jurisdiction.** This 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 and Wales. 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 this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 14.11 **Dispute resolution.** If any claim or dispute arises under or in connection with this Agreement, the parties will first attempt to settle such claim or dispute by negotiation (save that this clause 14.11

shall not prevent either party from seeking injunctive relief concerning a threatened or actual breach of any provision of this Agreement). If the parties have not settled any claim or dispute by

mediation within 30 days from the initiation of such negotiations, the dispute may be referred to and finally resolved by the courts.