

## **B&PO Standard Terms and Conditions**

### **1 Definitions and Interpretation**

1.1 The following words and phrases shall have the following meanings (except where the context otherwise requires):

**Agreement** means these Terms and any related SOW(s);

**Client** means the company which purchases the Services and Deliverables from B&PO as specified in the SOW;

**Client Materials** means any data, client equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Client which are provided to B&PO by the Client;

**Commencement Date** means the date specified in clause 3;

**Deliverables** means the Services which are to be provided by B&PO as specified in the SOW, including any B&PO Materials, B&PO Proprietary Materials, and Third Party Materials where applicable;

**Expenses** means any additional cost incurred by B&PO including but not limited to travel as detailed in clauses 5.3 and 7.15

**Fees** means the fees for the Services and Deliverables as detailed in the SOW and clause 7;

**Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation any act of government or state, civil commotion, epidemic, fire, flood, industrial action or organised protests by third parties, natural disaster, war, failure of payment systems, or any event beyond the reasonable control of the party claiming to be excused from performance of its obligations;

**Intellectual Property Rights** means the following rights, wherever in the world enforceable including all reversions and renewals: any patents or patent applications including any applications for same; any trade marks (whether or not registered) including any applications for registration of the same; inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration; copyright or design rights (whether registered or unregistered); database rights; any goodwill in any trade or service name, trading style or get-up; and any and all other intellectual or proprietary rights;

**Parties** means the Client and B&PO;

**Residuals** means information in intangible form, which may be retained by persons performing the Services, including, without limitation, ideas, concepts, know-how, and techniques which do not contain any Client Confidential Information;

**Services** means those services B&PO will perform for the Client as agreed between the parties or specified in the SOW and these Terms including but not limited to data analytics and consultancy services;

**SOW** means the statement of work which comprise one or more documents agreed and signed by the Parties from time to time detailing the Services and Deliverables to be provided by B&PO to the Client;

**Term** means the period from the Commencement Date until the termination of this Agreement;

**Terms** means these B&PO Standard Media Terms and Conditions;

**Territory** means the United Kingdom, unless expressly specified otherwise in the applicable SOW;

**Third Party Materials** means those materials which are either commissioned by B&PO from third parties during the Term and incorporated into the Deliverables, or which have been created by a third party and which are in existence at the time it is desired to make use of them for inclusion in the Deliverables;

**B&PO** means B&PO Limited, a company registered in England and Wales with registration number 11882658 whose registered office is at 7 Shottery Brook Office Park, Timothy's Bridge Road, Stratford Upon Avon, Warwickshire, CV37 9NR;

**B&PO Materials** means those materials specifically created by B&PO for the Client for the purposes of this Agreement by officers, employees or contractors of B&PO;

**B&PO Proprietary Materials** means content, materials, information, software, methodology, know-how and processes in existence prior to the date on which it is intended to use them in connection with performance under this Agreement and in relation to which the Intellectual Property Rights are owned by B&PO;

1.2 The SOW(s) form part of the Agreement with these Terms and any reference to the Agreement includes the SOW and these Terms.

1.3 References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted and to any subordinate legislation made from time to time under that provision.

1.4 Where any provision contained in a SOW conflicts with any provision of this Agreement, the following order of precedence shall apply: the SOW, the Terms.

### **2 Agreement to act as Service Provider**

2.1 The Client appoints B&PO to carry out and B&PO agrees to provide the Services and Deliverables to the Client in the Territory during the Term in accordance with this Agreement.

### **3 Term of appointment**

3.1 This Agreement shall commence on the date specified in the SOW or on the date that B&PO commences provision of the Services whichever is the sooner and continue until terminated by either party under clause 16, or by either party giving to the other not less than ninety (90) days' notice in writing.

### **4 The Services**

4.1 B&PO will perform the Services and deliver the Deliverables detailed in the SOW for the Client in accordance with these Terms.

4.2 B&PO will allocate suitable personnel with appropriate levels of experience and seniority to provide the Services and Deliverables. B&PO will ensure that any key personnel detailed in the SOW are committed to the provision of the Services and/or Deliverables.

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4.3 The Client acknowledges and agrees that it may be necessary for B&PO to replace the personnel involved in providing the Services and Deliverables with alternative personnel with similar levels of seniority and experience. The Client is entitled to object to any new appointee on reasonable grounds.

4.4 Each of the parties will use all reasonable endeavours to perform its obligations under this Agreement in accordance with any written timetable detailed in the SOW.

4.5 B&PO will act in willing co-operation with other communications suppliers appointed by the Client from time to time when developing communications plans and activities. The Client shall ensure that its other communications suppliers act in willing co-operation with B&PO.

4.6 The Client will co-operate fully with B&PO and will give B&PO clear briefings and instructions and ensure that all the necessary information provided to B&PO in order to perform its obligations under this Agreement is accurate. B&PO will co-operate fully with the Client and use reasonable care and skill in the performance and delivery of the Services and Deliverables to make the Advertising as successful as is to be expected from a competent digital agency.

### **5 Approvals and acceptance**

5.1 Any reference in this Agreement to the Client's "written approval" shall mean written approval by directors or employees of the Client authorised to approve the SOW(s), Services and Deliverables (each an "Authorised Person") which shall not to unreasonably withheld or delayed.

5.2 For the purposes of this Agreement written approval shall mean approval signified by:

5.2.1 any SOW, letter or purchase order from the Client bearing the signature of an Authorised Person;

5.2.2 an e-mail emanating from the e-mail address of an Authorised Person provided this is in circumstances where time does not permit approval as per sub-clause 5.2.1.

5.3 B&PO shall submit to the Client for its specific written approval estimates for Expenses in excess of five hundred pounds (£500) per Expense.

5.4 B&PO will advise the Client immediately of any material changes in the estimated cost or any material changes in work in progress previously approved in writing by the Client, unless such costs have been agreed as fixed.

### **6 Amendments or cancellations: work in progress**

6.1 The Client may request B&PO to cancel or amend any and all SOWs or work in progress. B&PO will take all reasonable steps to comply with any such request provided that B&PO is able to do so within its contractual obligations to relevant suppliers, which will be recorded as a variation to this Agreement.

6.2 In the event of any such cancellation or amendment in accordance with sub-clause 6.1, the Client will reimburse B&PO for any charges or Expenses incurred by B&PO to which B&PO is committed. The Client shall also pay for B&PO's time as stated in the SOW and if not stated at B&PO's standard rates or pro-rated commission covering the cancelled or amended Services and Deliverables as well as any charges imposed on B&PO by third parties arising from the cancellation or amendment.

### **7 Terms of payment**

7.1 **B&PO Fees (other services):** In consideration of B&PO's performance of the any Services and the delivery of any related Deliverables, the Client shall pay the Fees set out in and/or referred to in the SOW (or as otherwise agreed in writing with B&PO), which may include commissions agreed with the Client.

7.2 B&PO will invoice the Client in respect of the Fees monthly in arrears and the Client will pay the invoice within thirty (30) days of the date of invoice.

7.3 In the event that B&PO is unable to obtain credit risk insurance in respect of the Client or if B&PO's credit insurers revise or withdraw cover for the Client, B&PO reserves the right to revise its terms of payment and if necessary ask for payments in advance of service provision and/or seek suitable guarantees from the Client. If it is not possible to reach an agreement on suitable revised terms B&PO will have the right of termination set out in clause 16.3.

7.4 B&PO reserves the right to charge interest on all invoices presented to the Client which are not paid by the relevant due date at the annual rate of five (5) per cent above the base rate from time to time of Royal Bank of Scotland, provided that the rate charged to Client shall not be higher than the maximum rate allowable under applicable law. Such interest will accrue on a daily basis from the date on which payment became overdue up to the date on which the B&PO receives the full outstanding amount together with all accrued interest.

7.5 In the event of late payment B&PO reserves the right to:

7.5.1 withhold further delivery of Services and/or Deliverables under the SOW until payment in full has been received from the Client; and

7.5.2 alter the payment terms applicable to this Agreement including without limitation requiring the Client to pay in advance.

7.6 Each party shall pay all monies which are payable by it to the other without any right of set off, abatement or withholding in respect of monies which are due to it or alleged to be due to it from the other party.

7.7 B&PO will invoice the Client at cost in respect of Expenses incurred by B&PO in performing the Services and delivering the Deliverables.

7.8 Unless otherwise stated in the SOW, all Fees and other costs stated are in pounds sterling (GBP£) and exclusive of VAT.

### **8 Data Services and Payment**

8.1 Any Charges payable by B&PO specific to any required data services provided by the Client shall be set out in the SOW, and shall be the full and exclusive remuneration in respect of the performance of the Services. Unless otherwise agreed in writing by B&PO, the Charges shall include every cost and expense incurred directly or indirectly in connection with the performance of the Services.

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8.2 Invoices specific to any data based services provided to B&PO will be issued by the Client upon completion of the Service. Each invoice shall include such supporting information required by B&PO to verify the accuracy of the invoice, including the relevant purchase order number.

8.3 In consideration of the receipt of the data based services, B&PO shall pay the invoiced amounts by the end of the month following that in which B&PO receives a correctly rendered invoice to a bank account nominated in the invoice.

### **9 Insurance**

9.1 During the Term, B&PO shall at its discretion take out and maintain insurance policies to the value sufficient to meet its liabilities under this Agreement. Upon Client's request B&PO will provide the Client with evidence that such insurance is in place.

### **10 Confidential Information**

10.1 Each party undertakes that it shall not at any time during the Term or thereafter disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.

10.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with 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 10.2; and

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

10.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

10.4 The Client acknowledges and agrees that any identifiable and original idea or concept presented by B&PO in relation to any services provided by B&PO shall be acknowledged as being available only for the service being provided and shall not be used for any other purposes whatsoever, without B&PO's express prior written approval. Even where no service is agreed, the ideas and concepts presented to the Client shall remain strictly confidential and shall not be used in any way, including communication to any third party, without B&PO's prior written approval and agreement being reached regarding appropriate remuneration for B&PO.

10.5 The Client acknowledges that nothing in this Agreement shall affect B&PO's right to use as it sees fit any general marketing and/or advertising intelligence and/or Residuals gained by B&PO in the course of its appointment.

10.6 Nothing in this Agreement shall prohibit B&PO from retaining one copy of the Deliverables for its internal archive.

### **11 Intellectual Property**

11.1 B&PO acknowledges that ownership of Client Materials and ownership of all Intellectual Property Rights in any Client Materials (including any modifications or adaptations of such Client Materials produced in the course of providing the Services and Deliverables) shall remain vested in the Client or its licensors. The Client hereby grants to B&PO a non-exclusive, royalty-free, right and licence during the Term to use, copy, operate, process, modify and sub-license the Client Materials solely for the purposes of providing the Services and Deliverables. Client will indemnify B&PO for any claims made against B&PO relating to any B&PO Materials incorporating Client Materials or otherwise which are approved by the Client, as well as those arising out of the nature and use of the Client's products or services.

11.2 The Client acknowledges that all Intellectual Property Rights in B&PO Proprietary Materials shall be owned by and remain the property of and vested in B&PO. Subject to B&PO receiving payment of the Fees attributable to the B&PO Proprietary Materials licensed under this clause, B&PO hereby grants to the Client a non-exclusive, non-transferrable, perpetual, royalty-free licence to use such B&PO Proprietary Material as are included in the Deliverables. Client shall limit use of and access to the B&PO Materials to such of Client's employees as are directly involved in the utilisation of the Deliverables internally throughout Client's business and who are bound to preserve the confidentiality thereof. Prior to delivery of the Deliverables, B&PO shall obtain such licences or consents in respect of Third Party Materials as shall be necessary in order that the Client can use such Third Party Material for the purpose set out in the SOW. B&PO shall notify the Client of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Material, and the Client hereby indemnifies and keeps B&PO indemnified against any losses suffered by B&PO as result of the Client breaching any such restrictions.

11.3 B&PO agrees, at the Client's request and expense, to take all such actions and execute all such documents as are necessary (in the Client's reasonable opinion) to enable the Client to obtain, defend or enforce its rights in the Deliverable, and shall not do or fail to do any act which would or might prejudice the Client's rights under this clause 11.

11.4 B&PO shall not be liable under or in connection with this Agreement for any modifications, adaptations or amendments to any Deliverables made by the Client or by a third party on the Client's behalf, nor in the event that any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Client.

### **12 Data Privacy**

12.1 Client agrees to allow B&PO, its affiliates and sub-contractors, non-exclusive rights to collect, analyse, manipulate, and store non-personal and personal user and customer data on behalf of Client. In particular Client agrees that B&PO and its suppliers are entitled to place cookies, pixel tags, pixel-less techniques or web beacons and related technologies and other relevant tags on, and collect information (including Client's confidential information) from, the Client's websites and other relevant sources of data in relation to the provision of the Services.

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12.2 Client represents and warrants that (i) all data provided by or on behalf of Client to B&PO has been collected in compliance with applicable data protection laws and regulations, (ii) it has obtained all rights, third-party consents and approvals necessary in connection with the use of data by B&PO for the Services, and (ii) it has the legal right to disclose data to B&PO in connection with the Services to be performed under this Agreement.

12.3 B&PO shall employ reasonable technical and organisational security and physical measures as are appropriate given the nature of the data being collected to protect data received from unauthorised access to or acquisition, disclosure, alteration, or destruction of any data received from Client. B&PO agrees to process the data and perform the Services hereunder in accordance with all applicable data protection laws and regulations.

### **13 Warranties**

13.1 The Client warrants that to the best of its knowledge information and belief all information supplied to B&PO before and during the Term will be accurate and not in any way contrary to any law applicable in any part of the Territory.

13.2 Each party warrants that it has the full power and authority to enter into this Agreement.

### **14 Intentionally left blank**

### **15 Limitation of liability**

15.1 Nothing in this agreement shall exclude or in any way limit the Parties' liability for fraud, or for death or personal injury caused by its negligence or any other liability to the extent such liability may not be excluded or limited as a matter of law. Subject to this and excluding any liability arising under any indemnity under this agreement:

15.1.1 B&PO's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, will in no circumstances exceed the total net Fees paid to B&PO hereunder during the preceding twelve (12) months; and

15.1.2 in no event shall either Party be liable under this agreement for:

15.1.2.1 any loss of actual or anticipated income or profits, loss of contracts; or

15.1.2.2 any special, indirect or consequential loss or damage of any kind;

howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

15.2 This Agreement states the full extent of the Parties obligations and liabilities in respect of performance of the Services and delivery of the Deliverables.

15.3 The Parties agree that any condition, warranty representation or other term concerning the delivery of the Deliverables and/or the performance of the Services which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.

15.4 Nothing in the foregoing provisions shall preclude either party obtaining injunctive or other non-financial relief to which it is entitled.

### **16 Termination**

16.1 Either Party may terminate this Agreement by service of notice in accordance with clause 3.

16.2 Either party may terminate this Agreement immediately without financial penalty upon giving written notice to the other party if: (a) the other party materially breaches this Agreement and, where the breach is capable of being remedied, fails to remedy the breach within 30 days' of receiving such written notice; or (b) the other party enters into liquidation or if an administrator or receiver is appointed over the whole of any part of the other's assets or if the other enters into any arrangement for the benefit of its creditors generally or ceases or threatens to cease to carry on business.

16.3 B&PO shall be entitled forthwith to terminate this Agreement by written notice to the Client if B&PO is unable to obtain normal credit insurance in respect of the Client and advance payments or acceptable guarantees have not been made available by the Client within fourteen (14) days after B&PO's written request under the provisions of clause 7.9. During the period between B&PO's request for advance payments or suitable guarantees and the earlier of either the Client providing them or the end of the Term, all B&PO's obligations in relation to the booking of media shall be automatically suspended, as will any other B&PO obligation to enter into any commitments involving significant expenditure as principal on the Client's behalf.

16.4 The parties' rights, duties and responsibilities shall continue in full force during the agreed period of notice and, whether or not there is a period of notice, the Client shall pay all sums due in respect of work done, any Fees due and expenditure committed by B&PO until the end of the Term. For avoidance of doubt the Term includes any notice period and payments due include commission on media booked during any notice period but where transmission falls outside such period.

16.5 Upon the termination of this Agreement and payment by the Client of all items properly chargeable to the Client hereunder, B&PO will give the Client all reasonable co-operation in transferring, subject to the approval of third parties where required, all reservations, contracts and arrangements with media owners, third parties or others for space or time yet to be used and subject to, all rights and claims thereto.

16.6 If, prior to notice of termination of this Agreement, B&PO has at the request of the Client prepared detailed Media Plans or proposals for future advertising in respect of which B&PO has not been remunerated, B&PO shall be entitled to receive from the Client payment on the basis of fair compensation for work done.

16.7 If the Client wishes to use, after the Term and through another agency, a Media Plan drawn up by B&PO during the Term for the Client's future use, the Client shall not do so without B&PO's prior written consent and agreement being reached regarding appropriate remuneration for B&PO.

16.8 Provisions of this Agreement which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive termination, shall remain in full force and effect notwithstanding such termination.

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16.9 Any third party agreements that cannot be cancelled or assigned by B&PO to Client shall be carried to completion by B&PO, and Client shall remain liable for any payments or charges incurred by B&PO or due to B&PO as applicable compensation as outlined in any SOW.

### **17 Compliance**

17.1 Each party shall comply with all legislation, regulations, and other rules having equivalent force which are applicable to that party in connection with this Agreement.

17.2 Client acknowledges its responsibility for compliance with all data and privacy laws and regulations, including but not limited to the requirements to have up to date and accurate privacy and cookie notices on their websites where relevant

17.3 B&PO will use reasonable endeavours to ensure that any Service and/or Deliverable complies with all legislation, regulations, and other rules relating to the performance of the Services and/or the Deliverables.

### **18 Unfulfilled assumptions and delays**

18.1 B&PO's ability to perform the Services or provide the Deliverables specified in the SOW may depend on the fulfilment of assumptions, dependencies and Client responsibilities described in the SOW by the Client. In the event that any unmet dependency, incorrect assumption or Client responsibility delays or impairs the performance of the Services or provision of the Deliverables, then B&PO will not be liable for failure to perform its corresponding responsibilities unless the Parties agree otherwise in writing.

18.2 If at any time B&PO becomes aware that it will not (or is unlikely) to perform the Services or other Deliverables by any date set out in the SOW, B&PO shall notify the Client and provide details of the reasons for it. Where a delay in performing the Services or providing the Deliverables has been directly caused by B&PO, B&PO shall take reasonable steps to eliminate or mitigate the consequences of the delay.

### **19 General**

19.1 This Agreement constitutes the entire agreement between the parties, and supersedes any and all agreements and terms, whether written or oral, implied or explicit, and may only be amended or modified by a written agreement by both parties.

19.2 Failure or delay by either party in exercising any rights or remedy under this Agreement shall not operate as a waiver of any such right or remedy. If any provision of this Agreement is held to be unenforceable, such provision shall be amended only to the extent necessary to make it enforceable, and such unenforceability shall not affect other provisions of this Agreement.

19.3 Neither party shall be liable for any failure to perform or delay in performance of any of its obligations under this Agreement caused by circumstances beyond its reasonable control.

19.4 Any notice, invoice or other communication shall be served if sent to the other party at the address at the beginning of this Agreement or such other address as agreed in writing between the parties.

19.5 Neither party shall assign, transfer or otherwise dispose of this Agreement or any rights or duties hereunder without the prior written consent of the other.

19.6 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

### **20 Annual Review**

The Parties agree to meet annually and within sixty (60) days of the anniversary of the date of commencement of this Agreement in order to; review their relationship, the Services and Fees the subject of this Agreement and agree to negotiate in good faith any necessary amendments effective from the anniversary of the date of commencement of this Agreement. Should the review and negotiations not be concluded prior to the anniversary of the date of commencement of this Agreement, the Parties agree that B&PO is entitled to continue invoicing the Client on the terms of the SOW or this Agreement until such new Services and Fees are applicable. For the avoidance of doubt, any changes in the Fees will be backdated to the anniversary of the date of commencement of this Agreement, always provided that new Fees are not lower than prior year Fees in which case new Fees will then be effective only upon agreement and prospectively for the remainder of the annual period. Changes in Fees payable to B&PO will be related to changes agreed in the SOW or level of services provided by B&PO.

### **21. Non-solicitation**

21.1 Neither Party shall, during the term of this Agreement and for a period of six (6) months from the Termination Date, (except with the prior written consent of the other Party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment or engagement of that Party, any employee, worker or independent contractor of that Party who is employed or engaged in providing or receiving any services from/to the other Party within three (3) months prior to the activity prohibited by this clause 21.1;

21.2 A Party shall not be in breach of clause 20.1 as a result of running a national advertising campaign open to all comers and not specifically targeted at any of the staff or contractors of the other Party.

### **22 Governing law and jurisdiction**

22.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement.

### **23 Client Logo**

23.1 B&PO may include Client's name and logo on its customer lists and disclose and summarise generally the nature of any work being performed hereunder or under any SOW, provided that no such disclosure shall result in the breach of B&PO's confidentiality obligations under this Agreement. Any case studies B&PO may wish to produce for circulation will only be done with the prior written agreement of the Client.