



# Terms and Conditions of Supply

May 2018 edition  
Version 1.1b

The Customer's attention is particularly drawn to the provisions of clauses 9, 13 and 16.

## 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

<b>“Acceptance”</b>	the date on which the Product is accepted by the Customer pursuant to clause 5.
<b>“Business Day”</b>	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
<b>“Commencement Date”</b>	has the meaning set out in clause 2.2.
<b>“Conditions”</b>	these terms and conditions as amended from time to time in accordance with clause 17.8.
<b>“Contract”</b>	the contract between Fat Media and the Customer for the supply of Products and/or Services in accordance with these Conditions and comprises the Engagement Letter and the Conditions.
<b>“Fat Media”</b>	Fat Media Limited registered in England and Wales with company number 05645611.
<b>“Fat Media Materials”</b>	has the meaning set out in clause 9.1.6.
<b>“Customer”</b>	the person or firm who purchases the Products and/or Services from Fat Media, as detailed in the Engagement Letter.
<b>“Customer Materials”</b>	any materials which do not form part of the generic functionality of the Product such as visual features, text created on the instruction of the Customer or supplied by the Customer and includes the concept and “look and feel” of any Website (but excludes any software developed by Fat Media).
<b>“Delivery Location”</b>	has the meaning set out in clause 4.1.
<b>“Engagement Letter”</b>	the letter from Fat Media to the Customer setting out details of the Products and Services to be supplied by Fat Media to the Customer.

**“Force Majeure Event”**

an event beyond the reasonable control of Fat Media including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**“Intellectual Property Rights”**

all patents, rights to inventions, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**“Products”**

any tangible product created by Fat Media for the Customer as more fully described in the Engagement Letter or the Specification, including any Website created in connection with the Products.

**“Services”**

the services, including provision of the Products and the Website, supplied by Fat Media to the Customer as set out in the Engagement Letter and as more fully described in the Specification.

**“Specification”**

any specification for the Products, (including any relevant plans or drawings), and any specification for the Services (including any description of the Services) that is agreed in writing by the Customer and Fat Media.

**“Website”**

any website developed for the Customer by Fat Media (or one of its third party sub-contractors, consultants or agents) pursuant to the Services.

**“Website Specification”** those sections of the Specification which relate to the Website and its operation.

1.2 In these Conditions, a reference to a statute or statutory provision is a reference to such statute or statutory provision 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.

## 2. THE CONTRACT

2.1 Any confirmation from the Customer that it wishes to engage Fat Media shall constitute an offer by the Customer to purchase Products and/or Services from Fat Media in accordance with these Conditions.

2.2 The confirmation from the Customer shall only be deemed to be accepted when Fat Media sends written acceptance of the Order by issuing the Engagement Letter to the Customer, at which point, and on which date the Contract shall come into existence (**“Commencement Date”**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Fat Media which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by Fat Media and any descriptions of the Products or illustrations or descriptions of the Services contained in Fat Media's brochures or on Fat Media's website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract and exclude any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any estimate given by Fat Media shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

2.7 All of these Conditions shall apply to the supply of both products and Services except where application to one or the other is specified.

## 3. PRODUCTS

3.1 The Products to be supplied are described in the Specification.

3.2 Fat Media reserves the right to amend the Specification if required by any

applicable statutory or regulatory requirements.

#### **4. DELIVERY OF PRODUCTS**

- 4.1 Where the Products are capable of being physically delivered to the Customer, Fat Media shall deliver the Products to the location set out in the Engagement Letter or Specification (as applicable) or such other location as the parties may agree in writing ("Delivery Location") at any time after Fat Media notifies the Customer that the Products are ready.
- 4.2 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. Fat Media shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide Fat Media with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.3 If Fat Media fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement products of similar description and quality in the cheapest market available, less the price of the Products. Fat Media shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide Fat Media with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.
- 4.4 Fat Media may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract.

#### **5. TESTING AND ACCEPTANCE**

- 5.1 The Customer shall have 30 days following (as applicable) delivery of the Website in accordance with clause 4.2 or following notification by Fat Media that the Website is on Fat Media's test server and can be accessed for the purpose of conducting acceptance tests ("the Test Period") through the use of a full UAT plan to enable the Customer to sign off the delivery of the project scope. The acceptance tests are to enable the Customer to test the Website, to ensure that the Website meets the Website Specification. The Customer must notify Fat Media of any alleged failure of the Website to comply with the Website Specification ("Defect") during the Test Period. If the Customer does not give notice of a Defect during the Test Period, the Website shall be deemed to be free from Defects and Acceptance of the Website by the Customer shall take place at the end of the Test Period.
- 5.2 If the Customer notifies Fat Media of a Defect during the Test Period (subject to

clauses 5.4 and 5.5), Fat Media shall have 14 days (or such other period as the parties may agree) from the date of the notice to carry out adjustments to the Website in order to correct the Defect. Fat Media will then make the Website available to the Customer in order to carry out further acceptance tests. The Customer shall have 30 days, from the date the Website is made available again by Fat Media, to carry out these further tests. If no notification of a Defect is given during the further Test Period, the Website shall be deemed to be free from Defects and Acceptance of the Website by the Customer shall take place at the end of the further Test Period.

5.3 If a Defect shall occur during the further Test Period then (subject to clauses 5.4 and 5.5) the Customer may, at its option:

5.3.1 return the Website to Fat Media, to enable Fat Media to rectify the Defect within a reasonable period to be agreed by Fat Media and the Customer;

5.3.2 accept the Website with the Defect subject to an adjustment of the fees payable for the Website to fairly reflect the extent to which the Website (operating as a whole) is impaired by the Defect;

5.3.3 If the Defect is a material Defect which substantially impairs the operation of the Website and which has the effect of making the Website non-compliant with the Website Specification such that the Website cannot be used by the Customer, the Customer may, by written notice to Fat Media, reject the Website and terminate the Contract, and the terms of clause 15 will apply.

5.4 If any failure to pass the acceptance tests is caused by an act or omission of the Customer, by one of the Customer's sub-contractors or agents, or is due to third party products not supplied by Fat Media, the Website shall be deemed to have passed the acceptance tests. Fat Media shall provide such reasonable assistance as is requested by the Customer in remedying any such Defect by supplying additional services or products. If so requested, the Customer shall pay Fat Media in full for all such additional services and products at Fat Media's then current fees and prices.

5.5 In addition to Acceptance pursuant to clause 5.4, the Website will also be deemed to have been accepted upon the happening of any of the following events:

5.5.1 the Customer uses any part of the Website "live" (that is, for any revenue-earning purposes or to provide any services to third parties)

other than for test purposes; or

- 5.5.2 the Customer, without reasonable justification, delays the start of the acceptance tests or any retest for a period of 7 (seven) Business Days from the date when Fat Media notifies the Customer that the Website is ready to commence running the acceptance tests or retests.

## 6. QUALITY OF PRODUCTS

- 6.1 Fat Media warrants that on Acceptance, and for a period of 30 days from the date of delivery (“Warranty Period”), the Products shall:
  - 6.1.1 perform substantially, in all material respects, with their description and any applicable part of the Specification (minor interruptions and errors excluded);
  - 6.1.2 be free from material defects in design, material and workmanship; and
  - 6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 6.2 Subject to clause 6.3, if:
  - 6.2.1 the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 6.1;
  - 6.2.2 Fat Media is given a reasonable opportunity of examining such Products; and
  - 6.2.3 the Customer (if asked to do so by Fat Media) returns such Products to Fat Media's place of business at the Customer's cost, Fat Media shall, at its option, repair or replace the defective Products, or allow the Customer a rebate against any sum paid or to be paid by the Customer in respect of the defective Products.
- 6.3 Fat Media shall not be liable for the Products' failure to comply with the warranty in clause 6.1 if:
  - 6.3.1 the Customer makes any further use of such Products after giving a notice in accordance with clause 6.2;
  - 6.3.2 the defect arises because the Customer failed to follow Fat Media's oral or written instructions as to the storage, installation,

commissioning, use or maintenance of the Products or (if there are none) good trade practice;

6.3.3 the defect arises as a result of Fat Media following any drawing, design or specification supplied by the Customer;

6.3.4 the Customer alters or repairs such Products, or instructs a third party to do so, without the written consent of Fat Media;

6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

6.3.6 the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.4 Except as provided in this clause 6, Fat Media shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 6.1.

6.5 The terms of these Conditions shall apply to any repaired or replacement Products supplied by Fat Media under clause 6.2.

## 7. TITLE AND RISK

7.1 The risk in the Products shall pass to the Customer on completion of delivery or, where applicable, on Acceptance by the Customer.

7.2 Any Licences or rights shall not pass to the Customer until Fat Media has received payment in full (in cash or cleared funds) for:

7.2.1 the Products; and

7.2.2 any other goods that Fat Media has supplied to the Customer in respect of which payment has become due.

7.3 Until title to the Products has passed to the Customer, the Customer shall:

7.3.1 hold the Products on a fiduciary basis as Fat Media's bailee;

7.3.2 store the Products separately from all other goods held by the Customer so that they remain readily identifiable as Fat Media's property;

7.3.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price on Fat Media's behalf from



the date of delivery;

7.3.4 notify Fat Media immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4; and

7.3.5 give Fat Media such information relating to the Products as Fat Media may require from time to time,

but the Customer may resell or use the Products in the ordinary course of its business.

7.4 If, before title to the Products passes to the Customer, the Customer becomes subject to any of the events listed in clause 14.1.2 to 14.1.4; or Fat Media reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Fat Media may have, Fat Media may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

## 8. SUPPLY OF SERVICES

8.1 Fat Media shall provide the Services to the Customer in accordance with the Specification (if any) in all material respects.

8.2 Fat Media shall use all reasonable endeavours to meet any performance dates for the Services detailed in the Engagement Letter or the Specification (if any), but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

8.3 Fat Media 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 Fat Media shall notify the Customer in any such event.

8.4 Fat Media warrants to the Customer that the Services will be provided in a professional manner using reasonable care and skill.

## 9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

9.1.1 ensure that the terms of the Engagement Letter and the Specification (if any) are complete and accurate;

- 9.1.2 co-operate with Fat Media in all matters relating to delivery and performance of the Products and/or Services;
- 9.1.3 provide Fat Media, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Fat Media to provide the Services;
- 9.1.4 provide Fat Media with such information and materials as Fat Media may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- 9.1.5 as soon as reasonably practicable obtain, maintain and comply with the terms of all necessary licences, permissions and consents which may be required for the Products and/or Services;
- 9.1.6 keep and maintain all materials, equipment, documents and other property of Fat Media ("Fat Media Materials") at the Customer's premises in safe custody at its own risk, maintain Fat Media Materials in good condition until returned to Fat Media, and not dispose of or use Fat Media Materials other than in accordance with Fat Media's written instructions or authorisation;
- 9.1.7 ensure that any Customer Materials or information supplied by the Customer in relation to the Services is suitable for use and not of a libellous or illegal nature. Fat Media shall not be bound to use any such material or information in the course of providing the Services. If this happens, the Customer will be liable for Fat Media's charges for the Services. The Customer will also indemnify Fat Media against any losses, claims, damages, awards and professional fees it incurs in connection with or arising out of any libellous or illegal material printed, displayed or created for the Customer pursuant to the contract; and
- 9.1.8 ensure any portable media supplied to Fat Media containing Customer Materials, and any electronic transfer of Customer materials to Fat Media is made in a safe and secure manner, using suitable encryption methods. Further any transfer of Customer Materials must be made using a medium which is compatible with Fat Media's systems and software and does not contain and viruses, worms, bugs etc which may damage Fat Media's IT systems.
- 9.1.9 In relation to Products which include software belonging to third parties which will be licensed to the Customer, the Customer shall

not:

- 9.1.9.1 sub-licence, rent, lend, assign or transfer in any other way the licence relating to such third party software or the third party software (“the Software”) without the prior consent of Fat Media; or
- 9.1.9.2 give access to the Software through any network of computers to users who are not employees or agents of the Customer;
- 9.1.9.3 make adaptations or variations of the Software without the prior consent of Fat Media.

9.2 If Fat Media's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (“Customer Default”):

- 9.2.1 Fat Media 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 Fat Media's performance of any of its obligations;
- 9.2.2 Fat Media shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Fat Media's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- 9.2.3 the Customer shall reimburse Fat Media for any mutually agreed costs or losses sustained or incurred by Fat Media arising directly or indirectly from the Customer Default.
- 9.2.4 the Customer shall not and shall procure that each other Company in the Customer's Group shall not, without the prior written consent of Fat Media, at any time from the date of the Contract to the expiry of 18 months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.
- 9.2.5 Any consent given by Fat Media in accordance with condition 9.2.4 shall be subject to the Customer paying to Fat Media a sum equivalent to 25% of the current annual remuneration of Fat Media's

employee or sub-contractor or, if higher, 25% of the annual remuneration to be paid by the Customer or other member of the Customer's Group to such employee or sub-contractor.

## 10. CHARGES AND PAYMENT

- 10.1 The price for Products and Services shall be the price set out in the Engagement Letter and may be subject to variation in accordance with these Conditions.
- 10.2 The charges for Services are calculated on a time and materials basis in accordance with Fat Media's hourly charge out rates.
- 10.3 Fat Media shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Fat Media engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Fat Media for the performance of the Services, and for the cost of any materials, with written permission from the Customer.
- 10.4 Fat Media reserves the right to:
- 10.4.1 increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. Fat Media will give the Customer written notice of any such increase at least 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Fat Media in writing within 14 days of the date of Fat Media's notice and Fat Media shall have the right without limiting its other rights or remedies to terminate the Contract by giving 14 days written notice to the Customer; and
  - 10.4.2 increase the price of the Products and/or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products and/or Services to Fat Media that is due to any request by the Customer to change the delivery date(s), Products or Services ordered, or the Specification, or any delay caused by any instructions of the Customer in respect of the Products and/or Services or failure of the Customer to give Fat Media adequate or accurate information or instructions in respect of the Products and/or Services.
- 10.5 Fat Media shall invoice the Customer for the Products and Services as stated in the Engagement Letter or as otherwise agreed with the Customer. All invoices

are normally due 30 days from submission.

- 10.6 The Customer shall pay each invoice submitted by Fat Media within 30 days of the date of the invoice, in full and in cleared funds, to a bank account nominated in writing by Fat Media, and time for payment shall be of the essence of the Contract.
- 10.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (“VAT”). Where any taxable supply for VAT purposes is made under the Contract by Fat Media to the Customer, the Customer shall, on receipt of a valid VAT invoice from Fat Media, pay to Fat Media such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.
- 10.8 Without limiting any other right or remedy of Fat Media, if the Customer fails to make any payment due to Fat Media under the Contract by the due date for payment (“Due Date”), Fat Media shall have the right to charge interest on the overdue amount at the rate of four (4) per cent per annum above the then current base lending rate of HSBC Bank plc accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 10.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Fat Media in order to justify withholding payment of any such amount in whole or in part. Fat Media may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Fat Media to the Customer.

## 11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Fat Media, with the exception of any Intellectual Property Rights in the Customer Materials.
- 11.2 Fat Media owns all Intellectual Property Rights in the software developed for the Products and digital artwork written or developed by Fat Media (including, without limitation, all file layouts and screen layouts developed by Fat Media which are part of or associated with the use of the software) but excluding products supplied or licensed by third parties, design and copyright material owned by the customer used in the web site.

- 11.3 Upon the Customer paying for the Products and Services in full, Fat Media will grant the Customer a perpetual, non-exclusive, royalty-free licence of all Intellectual Property Rights in the Website. For the avoidance of doubt, no third party is permitted to use any Intellectual Property Rights licensed to the Customer except with the prior written consent of Fat Media. The licence will be non-transferrable and non-assignable by the Customer except with the prior written consent of Fat Media.

If the contract is terminated by the Customer pursuant to clause 14.1.1-14.1.4, the Customer will be granted a perpetual, non-exclusive, royalty-free licence to use, maintain, enhance, modify and/or further develop the Website (subject to any restrictions contained in any third party product's licence terms) and Fat Media shall (either in advance or immediately upon termination of this Contract as described) supply to the Customer or its nominated replacement service provider a copy of the source materials used in the development of the Website PROVIDED THAT the Customer and (if applicable) its nominated replacement service provider shall only use such source materials and other materials strictly in connection with the operation of the Website and such use shall be subject to the provisions of clause 12 (which the Customer will procure its nominated replacement service provider's observance of by agreement in writing).

- 11.4 All products supplied by third parties are supplied in accordance with the relevant licensor's standard terms.
- 11.5 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on Fat Media obtaining a written licence from the relevant licensor on such terms as will entitle Fat Media to license such rights to the Customer.
- 11.6 All Fat Media Materials are the exclusive property of Fat Media. All Customer Materials are the exclusive property of the Customer.
- 11.7 The Customer shall indemnify Fat Media against all liabilities, costs, expenses, damages and losses suffered or incurred by Fat Media in connection with any claim made against Fat Media for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Fat Media's use of the Customer Materials or any element of the Specification which was inserted by the Customer. This clause 11.7 shall survive termination of the Contract.

## 12. CONFIDENTIALITY

A party (“**Receiving Party**”) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (“**Disclosing Party**”), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party’s business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party’s obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 12 shall survive termination of the Contract.

## 13. LIMITATION OF LIABILITY: THE CUSTOMER’S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 Nothing in these Conditions shall limit or exclude Fat Media’s liability for:

13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

13.1.2 fraud or fraudulent misrepresentation;

13.1.3 breach of the terms implied by section 2 of the Supply of Products and Services Act 1982 (title and quiet possession);

13.1.4 breach of the terms implied by section 12 of the Sale of Products Act 1979 (title and quiet possession); or

13.1.5 defective products under the Consumer Protection Act 1987.

13.2 Subject to clause 13.1:

13.2.1 Fat Media shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

13.2.2 Fat Media’s total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Contract

for the Products and/or Services.

13.3 The terms implied by sections 13 to 15 of the Sale of Products Act 1979 and the terms implied by sections 3 to 5 of the Supply of Products and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.4 This clause 13 shall survive termination of the Contract.

#### 14. **TERMINATION**

14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

14.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;

14.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party; the other party (being an individual) is the subject of a bankruptcy petition or order; a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; an application is made to court, or an order is made, for the appointment of an administrator or if an administrator is appointed over the other party (being a company); a floating charge holder over the assets of the other party



(being a company) has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- 14.1.3 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2;
  - 14.1.4 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 14.2 Without limiting its other rights or remedies, Fat Media may terminate the Contract:
- 14.2.1 by giving the Customer 3 months' written notice;
  - 14.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 14.3 The Customer may terminate the Contract by giving Fat Media not less than three months' written notice.
- 14.4 Without limiting its other rights or remedies, Fat Media shall have the right to suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between the Customer and Fat Media if:
- 14.4.1 the Customer fails to make pay any amount due under this Contract on the due date for payment; or
  - 14.4.2 the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4 or Fat Media reasonably believes that the Customer is about to become subject to any of them.

## 15. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- 15.1.1 the Customer shall pay, within 30 days, to Fat Media all of Fat Media's outstanding unpaid invoices and, in respect of Services supplied but for which no invoice has yet been submitted, Fat Media shall submit an invoice, which shall be payable by the Customer;
- 15.1.2 if relevant, the Customer shall return all of Fat Media Materials. If the Customer fails to do so, then Fat Media may enter the

Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

- 15.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, 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;
- 15.1.4 upon payment of all amounts due, Fat Media shall return to the Customer all Customer Materials; and
- 15.1.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 16. DATA PROTECTION

- 16.1 In this clause, references to “Personal Data”, “Data Controller”, “Data Processor” and “Data Subject” shall have the meanings ascribed to them in the Data Protection Act 1998 and the General Data Protection Regulation (GDPR). Also, see Fat Media’s full Privacy and Cookies Policy at <https://www.fatmedia.co.uk/media/2342/privacy-policy.pdf>
- 16.2 To the extent that Fat Media is required to process any Personal Data belonging to the Customer, the Customer shall be the Data Controller of that Personal Data and Fat Media shall be the Data Processor.
- 16.3 The Customer warrants to Fat Media that it has the legal right to disclose all Personal Data that it does in fact disclose to Fat Media under or in connection with this agreement and that it has the necessary consent for Fat Media to process this data.
- 16.4 The Customer shall only supply Fat Media, and Fat Media shall only process, in each case under or in relation to this agreement, the personal data of data subjects for email marketing campaigns, website development or other marketing services.
- 16.5 Fat Media shall process the Personal Data only in accordance with the Customer’s instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by the Customer.
- 16.6 Each party warrants to the other that it will process the Personal Data in compliance with the Data Protection Act 1998, GDPR and all other applicable

laws, enactments, regulations, orders, standards and other similar instruments.

- 16.7 Each party agrees to indemnify and keep indemnified the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 16.
- 16.8 The Customer acknowledges that Fat Media is reliant on the Customer for direction as to the extent to which Fat Media is entitled to use and process the Personal Data. Fat Media will only use the data supplied by the Customer or its systems, explicitly for the use and benefit of that Customer.
- 16.9 Fat Media may authorise a third party to process the Personal Data provided that the third party's contract:
  - 16.9.1 is on terms which are substantially the same as those set out in this clause 16; and
  - 16.9.2 terminates automatically on termination of this agreement for any reason.

## 17. GENERAL

- 17.1 Force majeure:
  - 17.1.1 Fat Media shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
  - 17.1.2 If the Force Majeure Event prevents Fat Media from providing any of the Services and/or Products for more than 6 weeks, Fat Media shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 17.2 Assignment and subcontracting:
  - 17.2.1 Fat Media may at any time assign, transfer, 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.
  - 17.2.2 The Customer shall not, without the prior written consent of Fat Media, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.3 Notices:

17.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business or sent by fax to the other party's main fax number.

17.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

17.3.3 This clause 17.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

17.4 Waiver and cumulative remedies:

17.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

17.5 Severance:

17.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- 17.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 17.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 17.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Fat Media.
- 17.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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