

# WORKING TOGETHER

## McCann Synergy terms and conditions

### 1 Agreement to Act as Agency

- 1.1 The "Client", the company named in any relevant statement of work, media schedule, estimate or invoice to which these Terms & Conditions apply (the "SoW"), appoints McCann Synergy Limited (the "Agency") to carry out, and the Agency agrees to provide, the services outlined in the SoW (the "Services") to the Client during the Term (as defined below) in accordance with these Terms & Conditions.
- 1.2 Any cancellation, amendment or additions to the Services provided by the Agency must be agreed in writing between the Agency and the Client. The Agency will take all reasonable steps to comply with any such request from the Client provided that the Agency is able to do so within its contractual obligations to suppliers.
- 1.3 In the event of any such cancellation, amendment or addition to the Services provided the Client will reimburse the Agency for any charges or expenses committed to or incurred by the Agency. The Client shall also pay the Agency's remuneration covering the cancelled or amended Services as well as any charges imposed on the Agency by third parties arising from the cancellation or amendment.
- 1.4 The Agency will allocate suitable personnel with appropriate levels of experience and seniority to provide the Services. The Client acknowledges and agrees that it may be necessary for the Agency to replace the personnel with alternative personnel with similar levels of seniority and experience.
- 1.5 The Agency acts in all its contracts as a principal at law and the Client appoints the Agency as sole provider to perform the Services.
- 1.6 The Agency may outsource or sub-contract its performance of the Services or part thereof with the prior consent of the Client, such consent not to be unreasonably withheld or delayed.

### 2 Term of Appointment

- 2.1 These Terms & Conditions shall be effective from the date of the first relevant SoW and shall continue until all Services are completed and delivered pursuant to any and all relevant SoW, or unless terminated pursuant to Clause 7 (the "Term").

### 3 Co-operation

- 3.1 The Client will give the Agency clear briefings and ensure that all the facts given about the Account are accurate. The Agency will co-operate fully with the Client and use reasonable care and skill to make the Materials (as defined below) as successful as is to be expected from a competent communications agency. The Client will help the Agency do this by making available to the Agency all relevant information and co-operating with the Agency.

### 4 Fees and Production Costs

- 4.1 The Client shall pay the Agency the fee for the Services as set out in any relevant SoW, or as otherwise agreed between the parties in writing, (the "Fee"). Unless otherwise stated in the SoW, the Fee is earned on a fixed and non-reconcilable basis and shall be payable in addition to all production, studio costs, and other disbursements and expenses committed to or incurred.
- 4.2 All production costs and expenses are normally invoiced at the value of estimates set out in the relevant SoW.
- 4.3 The Client will pay all Fees and other production costs and expenses within 30 days of the date of the invoice, or as otherwise agreed between the parties in writing. Where suppliers require payment in advance or at various stages of production, the Agency will notify and obtain the Client's written agreement in advance and payment will be made immediately upon presentation of invoice or by the date specified thereon.

- 4.4 POs will be issued in advance for all work to be paid for by the Client. Should this not be possible, the Client must approve the estimate in writing in advance and this will serve as sufficient authority until the PO is issued.
- 4.5 All Fees and other charges issued by Agency shall be exclusive of VAT or other taxes. In addition to the charges issued by Agency, Client shall be solely responsible to pay all VAT and other tax charges that are levied or imposed by reason of the transactions contemplated by these Terms & Conditions.

### 5 Media Charges

- 5.1 In respect of media buying Services, the Agency shall invoice media costs payable by the Client for media space booked by the Agency based on the negotiated gross cost of media less the standard agency discount given by the media owner or as otherwise as approved by the Client on the relevant SoW ("Media Charges") together with the associated Fee and any industry related charges as set out in Clause 5.5.
- 5.2 The Client acknowledges and understands that media costs, ratings and/or other campaign metrics as set out in any SoW represent estimates based on market predictions and that the final actual pricing, channel share and/or ratings performance may therefore differ from that set out in any SoW.
- 5.3 The Agency purchases media on behalf of its clients as principal and at its own risk and may, on occasion, receive from the media owner's volume or other discounts, bonuses, free or discounted media space or any other equivalent benefit ("AVBs") derived from the Agency's aggregate spend across many clients. The Client hereby agrees that the Media Charges incurred by the Agency for the Client pursuant to this agreement/schedule may be aggregated in any such Agency AVB arrangements with media suppliers. The Agency reserves the right to utilise such AVBs to discount media costs to the Agency and, in such instances, the final media costs payable by the Agency to relevant media owners may differ from the Media Charges payable pursuant to these Terms and Conditions. The Agency will always act in media neutral manner in the delivery of the media buying and planning Services hereunder.
- 5.4 Unless otherwise stated in the applicable SOW, where the Agency verifies the placement of advertisements it is the Clients' responsibility to notify the Agency in writing within 30 days of date of insertion if the Client advertisement does not appear or is to a different specification than that agreed in accordance with these T&Cs or the applicable SOW. In the absence of such notification the advertisements will be deemed to have appeared as specified and are payable in full by the Client.
- 5.5 The Agency shall also invoice the Client, as applicable, the following industry related charges:
  - Charges for Donovan Data Systems Limited at 0.175% of the sum of Media Charges, or such other rate as advised by the Agency to the Client in advance from time to time;
  - British Advertising Research Bureau levy applicable to television advertising at 0.3% of Media Charges or such other rate as advised by Agency to Client in advance from time to time;
  - In order to fund the UK self-regulatory system, a levy is payable to the Advertising Standards Board of Finance ("ASBOF") in relation to non-broadcast advertising and to the Broadcast Advertising Standards Board of Finance ("BASBOF") in relation to broadcast advertising. The ASBOF levy will be a percentage to be determined by ASBOF from time to time (currently 0.1%) of the Media Charges for outdoor, cinema, paid-for search, mobile and press display advertisements (excluding classified lineage, semi-display and any displays, screenings and publications outside the UK), the postage cost of direct mailings in the UK, and internet advertising in paid for space. The BASBOF levy will be a percentage to be determined by BASBOF from time to time (currently 0.1%) of the Media Charges for broadcast advertisements in the UK

5.6 Payment terms for those industry related charges set out above are 28 days from date of invoice, with the exception of TV media which is due within 15 days of the date of invoice. Surcharges applied by media owners may be levied in the case of late payment. The Client accepts it will be liable for such late copy charges if the Agency is not responsible for providing such copy or at fault for failing to do so on time.

## 6 Media Services (Including Specialist Media Services)

6.1 The Client hereby authorises the Agency or Agency Group Companies when providing ad serving, programmatic media, analytics, retargeting, or search, to use third party cookies, pixel tags, web beacons, technologies, and other relevant tags and data sources (together, "Tags") to collect and use data (which may include IP addresses and other device identifiers) gathered with respect to one or more of Client's owned and/or operated or affiliated websites (collectively, the "Sites"). Client acknowledges to the Agency and its Group Companies that it is solely responsible for the relevant privacy policies on the Sites, to ensure that data collection through Tags and data usage complies with all applicable laws, rules and regulations, including but not limited to applicable data/privacy laws, self-regulatory principles, guidelines, rules and codes of conduct (e.g., EDAA) to which third parties providing services, platforms, and data as part of the Agency Group Company Services are bound (collectively, "Applicable Laws"). Client represents, warrants and covenants that, with respect to each website, mobile app, or other digital property owned, operated or controlled by Client, Client does and throughout the term will: (i) prominently display and comply with a privacy policy that (A) fully, accurately, and clearly discloses that ads or other content may be served by third parties (including third-party ad servers), and that such third parties use or may use cookies or other code or technology to collect user information; (B) conspicuously enables or links to a page that enables the user to opt out of having data used for online advertising; and (C) otherwise complies with all Applicable Laws. Client represents, warrants and covenants that it will not sublicense or resell the Tags to any third party, or share the Tags with any third party without Agency's or Agency Group Company's prior written approval.

6.2 Agency or Agency Group Companies may, upon Client request, perform the following specialist services: (i) SEO & PPC, (ii) Social Media, (iii) Programmatic Buying (iv) Orion Capital Programme and/or (v) Orion Barter Programme (taken together "Specialist Media Services"). In such circumstances the remaining (and applicable) terms of this clause 6 shall apply.

6.3 Media Charges and other costs and related expenses, including any Fee to be paid to the Agency or any Agency Affiliate for providing Specialist Media Services ("Specialist Media Charges"), shall be approved by Client in writing including in a statement of work, media buy authorization, media plan, insertion order, purchase order, or otherwise pursuant to these Terms and Conditions (an "Approval"). The Specialist Media Charges are fixed and non-reconcilable unless the parties agree otherwise in writing. Ad serving, Ad verification or technology costs associated with the implementation and measurement of media campaigns executed by Agency or Agency Affiliates shall be charged in addition to any Specialist Media Charges.

### SEO & PPC

6.4 These services consist of the provision of (i) keyword research, site auditing and technical consultancy in order to improve client site ranking and share of voice in all major search engines across all digital formats (SEO); and (ii) media management across Google, YouTube and Bing search engines, including account setup and management, keyword research, content enhancement, optimisation and billing (PPC).

6.5 Client shall be solely responsible for approving relevant and appropriate keywords, titles and descriptions and content ("Search Content") relating to SEO and PPC products or services. Client will review all such Search Content and confirm the legality, accuracy, completeness and propriety of such material and will also be responsible for the determination of infringement or non-infringement of any trademarks or service marks provided by Client.

6.6 Client acknowledges and agrees that a media vendor may, in its sole discretion, refuse to display or continue to display any of Search Content, that a Client website may be excluded from search engine or social media platform at any time at the sole discretion of the search engine or platform, and that social media platforms may be changed by third parties that may adversely affect the visibility of Client's social media profiles. Agency shall not be liable for such refusal, exclusion or changes.

6.7 In performing SEO services, Agency does not have control over exact positioning and traffic of search results, search engine result algorithms, or other factors, and therefore cannot guarantee any exact positioning of Search Content on search engines or other results. Client also acknowledges that search engines may take two (2) to four (4) months or longer to index new webpages or social media assets, and Agency shall not be responsible for such timing, and, occasionally, search engines will drop listings for no apparent or predictable reason. Often listings will reappear without any additional submissions. Should the listing not reappear, Agency will re-submit the website based on the current policies of the search engine in question.

6.8 Due to the competitiveness of some keywords and keyword phrases, ongoing changes in search engine ranking algorithms and other competitive factors, Agency does not guarantee where Client will be positioned by the search engine for any particular keyword, phrase or search term.

6.9 If Client decides to submit to a directory which requires a fee and/or pursue paid linking opportunities, the costs will be passed through directly to Client and are incremental to any approved fixed fees.

6.10 Client shall be responsible for implementing code changes to Client's website required in connection with search services. Agency is not responsible for Client's overwriting SEO work to Client's website(s) (e.g., Client webmaster making changes and uploading over recommendations already provided).

6.11 Client website migrations and/or website redesigns that occur while services are being performed may affect such services. Agency shall not be responsible for any delays, service disruptions, degradation in service or inability to perform due to Client website changes, and Client shall pay any additional costs or fees reasonably required to perform the previously-agreed services in light of the changes.

### Social

6.12 Additional fees are required for managed services for delivering performance advertising campaigns through various social networks advertising platforms using native tools and third-party technology such as: Creating brand or company on line Profiles; Strategic Planning for social; Effective setup and Management of branded social networks; Creating methods that engage conversation with target audiences; Building social applications to maximize sales, branding potential; Reporting & Analysing on social media; Updating, creating content including images, video content, promotions.

6.13 Agency may as part of the Services be required to post communications on the Client's social media platforms or otherwise manage its social media accounts. Where the Client requests such Social Media Services through platforms such as Amazon, Google, Facebook, Twitter and Instagram and others (together, "Platforms") the Client acknowledges these Platforms will: (1) process its data on their platforms, and (2) require the Agency to warrant it has authority to bind the Client to their standard terms and conditions. The Client therefore hereby grants such authority to the Agency to bind it to the Platform terms and further warrants to the Agency that it will comply with those Platform terms and conditions.

### Programmatic Buying

6.14 Programmatic Advertising Services (including online, mobile, video, television and other media channels for which programmatic is available) is a system that automates the processes and transactions involved with (a) purchasing and dynamically placing ads on websites or mobile apps and for television, radio or out-of-home via any online platform or exchange such as Google, Facebook, Twitter, AOL or others (b) targeting and retargeting and audience identification and customization; and (c) audience verification, analysis and reporting relating to such purchased media.

### Orion Capital Programme (Orion Capital)

6.15 Agency Group Company, Orion, can offer the Clients the possibility to take advantage of its bank of media credit options obtained via confidential trade agreements Orion has established with media owners and other suppliers (the "Programme"). The Client may choose to utilise these media credit options to pay for a portion of the media plan agreed by the Client and the Agency pursuant to this Agreement, whilst maintaining any agreed quality parameters therein, at a lower cost than the Agency's negotiated rates with the relevant media owner.

6.16 If the Client chooses to utilise the Programme it does so on the following terms: Orion will not charge Client any fees for utilising the Programme; media purchased through the Programme shall be subject to performance verification, whereby the quality parameters of media placements are able to be verified and the Client will be entitled to savings reports as mutually agreed; the Agency shall verify the accuracy of all media placements, for time, and space ordered through the Programme by procuring customary proofs of performance from media vendors; Orion shall not be subject to any non-compete provision in the Agreement; Orion shall not be subject to any Audit nor have any obligation to identify its compensation in an invoice or otherwise, this is because Orion's trade agreements with media owners and suppliers are confidential to the parties the rates that Orion transacts for media or related services will not be disclosed to Client or Agency.

#### **Orion Barter Programme**

6.17 Orion's barter programme ("Barter Programme") is separate and distinct from the Programme and is not part of the Services under this Agreement. Should the Client choose to part purchase media through Orion's Barter Programme, it must enter into a separate agreement with Orion.

### **7 Intellectual Property Rights and Warranties**

7.1 Where the Agency is providing creative services, the Agency shall, upon Client's request, assign to the Client the intellectual property rights in the material created solely by the Agency specifically for the Client and which are owned by the Agency and capable of assignment ("Agency Materials"). Such assignment shall be made provided all obligations of the Client arising from these Terms and Conditions (including without limitation those relating to payment and notice periods) have been met. Such assignment shall be subject to clause 7.2 below.

7.2 As regards any third party owned materials that the parties desire to make use of in the provision of the Services, the Agency shall use reasonable endeavours to procure an assignment of any necessary third party owned materials in the first instance but where such assignment is not possible the Agency shall obtain for the Client all such usage rights in such materials as are deemed necessary and agreed by the parties at the time such material is selected or obtained. The Agency shall not enter into any licence without the Client's consent for the terms and fee of such licence]

7.3 The Agency warrants that the Agency Materials are the original work of the Agency and shall not infringe any third party rights.

7.4 Notwithstanding the above the Agency shall, with the Client's written consent, be able during and after the relationship to use the materials created for the purpose of promoting its own business and for purposes associated with the entry and conduct of advertising industry awards schemes.

7.5 Where the Agency is providing media services the Client warrants that: (i) it is the owner, licensor or has the right to authorise use of all the advertising content provided by it or its authorised third parties and agents to the Agency (The Advertising) and this will not infringe copyright, trade marks, trade names, design rights or data base rights (the Intellectual Property Rights) of any third party and will not contain any material which is obscene, offensive, defamatory and will comply in all respects with all relevant laws, rules and Regulations; (ii) in the event that Agency grants the Client access to any third party services (including, without limitation, any technology or third party platforms) as part of the Services, the Client shall comply with all applicable privacy policies, terms and conditions and/or any other instructions communicated to Client by Agency, or the applicable third party (it being acknowledged by the Client that, for example, third party providers such as Google's DoubleClick Bid Manager may use data gathered from Agency Group Companies and/or Client's use thereof in a manner that does not identify such Agency or Client or end users as the source of such data); and (iii) Agency Group Companies may use their proprietary pixel management system together with third party pixel tags, web beacons, technology and other relevant tags ("Tags") to collect and/or use IP Addresses, cookies, non-personal data or anonymous user data from one or more of Client owned and/or operated websites ("Data").

7.6 The Client shall indemnify the Agency and keep the Agency indemnified in the event of any losses, costs and expenses (including reasonable legal costs) of whatsoever nature suffered by the Agency in connection with a breach or an alleged breach of Clause 6.5. If there is an error in Advertising as published or publication is delayed or does not occur as planned, the Agency will not be liable unless this is caused by the wilful default or gross negligence of the Agency.

7.7 All processes, methodologies, models, and data provided, developed, optimised or improved by Agency or an Agency Group Company in connection with its provision of Agency Group Company Services shall remain the property of the Agency or that Agency Group Company. Neither Agency nor Agency Group Companies grant Client any rights in any third-party data or information other than as expressly set out in this Schedule.

### **8 Third Party Contracts**

8.1 The Client acknowledges and agrees that the Agency may have to enter into contracts with third party suppliers in respect of Services in accordance with such suppliers' standard or individual conditions and contracts, as may be negotiated by the Agency on a case by case basis ("Third Party Contracts"). Provided that the Agency has notified the Client of any significant restrictions or contract terms contained in such Third Party Contracts, the Client hereby acknowledges and agrees that: (i) its right to use or otherwise benefit from any Services acquired under such Third Party Contracts (including any rights of amendments, omission and/or cancellation) shall be as set out in such Third Party Contracts; and (ii) any charges or liabilities (to the extent caused by an act or omission of the Client or any third party acting for or on its behalf) for which the Agency is liable under such Third Party Contracts (including cancellation payments or retrospective Media Charges) shall be the responsibility of the Client.

### **9 Termination**

9.1 Either party may terminate these Terms & Conditions by giving the other party written notice as set out in the relevant SoW. In the absence of a specific notice period in the relevant SoW, the terminating party shall provide such notice as is reasonable having regard to the relevant SoW.

9.2 Either party may terminate these Terms & Conditions immediately by notice in writing to the other if the other party is in material breach of any of these Terms & Conditions and, in the case of a breach capable of remedy, fails to remedy such breach within 30 days of receipt of written notice giving full particulars of the breach and of the steps required to remedy it.

### **10 Liability**

10.1 The Agency's maximum aggregate liability under these Terms & Conditions is no greater than the total Fees paid to the Agency under the relevant SoW. Neither party shall be liable for any indirect or consequential losses.

10.2 By executing a relevant media buying approval, Client may authorise the Agency to purchase media including through one or more Platforms and the Client acknowledges that in order to use certain Platform features or functionalities for Client's benefit, including any beta features, those Platform terms will also apply to Client. Agency and/or the relevant Agency Affiliate will pass through to Client any warranties, representations and indemnifications that Agency or the relevant Agency Affiliate are able to secure from the Platforms for the benefit of Client, but the Agency is not otherwise liable for the Platforms.

### **11 Miscellaneous**

11.1 The cost to the Agency of materials or services purchased overseas may be more or less than the cost anticipated as a result of fluctuations in the rate of currency exchange. If so, the Agency will charge the Client at Lloyds TSB Bank plc's exchange rate on the date the Agency pays for the relevant materials or services.

11.2 A person who is not a party to these Terms & Conditions has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms & Conditions.

11.3 These Terms & Conditions constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of these Terms & Conditions. No variation of these Terms & Conditions 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. Unless specifically stated in these Terms & Conditions or in any relevant SoW, where there is any discrepancy between the terms contained herein and those stated on any relevant SoW the terms of these Terms & Conditions shall take precedence.

11.4 The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales and agree that these Terms & Conditions will be governed by and construed in accordance with the laws of England and Wales.