

ZiNC

Terms & Conditions

Engagement Services

1. Definitions & Interpretation

1.1. In this Agreement, the following words and phrases shall have the following meanings:

“Client” means the person, partnership firm or company detailed in our Quotation, to which the Services are to be supplied. Where the person entering into the Contract is doing so on behalf of the Client, that person confirms they have the authority to contractually bind and enter into the Contract on behalf of that Client which shall be the Client in the context of this Contract;

“Company” means Zinc Digital Creative Marketing Limited (otherwise known as Zinc) registered in England with company number 12159042, operating from The Old Garage, 33 Bedford Road, Little Houghton, Northampton NN7 1AB, and whose registered office is at 22-24 Harborough Road, Kingsthorpe, Northampton, NN2 7AZ;

“Contract” means the legally binding agreement formed upon acceptance by the Client as detailed in clause 3 for our provision of the Services, which shall incorporate and be subject to these Terms and Conditions;

“Fee(s)” means the charges for the Services as set out in the Quotation;

“Forward Investment” refers to the Company providing an allocation of resource upfront at no cost to the Client or its Affiliates for the provision of the Services on the basis of an agreed Minimum Period or incentive-based payment where specified in the Quotation.

“Hours Overage” refers to the total number of hours used by the Client in each calendar year that is surplus to the total monthly allocation of hours due to have been given to the Client in the delivery of the Services during that calendar year. The resulting number of hours is chargeable to the Client at the Standard Rates unless otherwise agreed in writing.

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trade marks, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights (including without limitation 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;

“Quotation” means our Quotation for the provision of the Services and to the Client;

“Services” means the activities and deliverables to be provided by the Company to the Client, as set out in the Quotation;

“Standard Rates” means the hourly chargeable rate (£85.00 per hour unless otherwise specified in the Quotation);

“Start Date” means the date agreed by both Parties for the provision of the Services to commence.

- 1.2. Unless the context otherwise requires, each reference in this Contract to:
 - 1.2.1. “we”, “us” and “our” is a reference to the Company;
 - 1.2.2. “you” and “your” is a reference to the Client;
 - 1.2.3. “writing” and “written” includes emails;
 - 1.2.4. a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.5. “these Terms and Conditions” is a reference to the Terms and Conditions of this Contract as amended or supplemented at the relevant time;
 - 1.2.6. a “clause” is a reference to a clause in this Contract;
 - 1.2.7. a “Party” or the “Parties” refer to the parties to this Contract
- 1.3. The headings in this Contract are for convenience only and do not affect their interpretation.
- 1.4. Any reference to a Party includes its employees, agents and sub-contractors.
- 1.5. Words imparting the singular number shall include the plural and vice versa. References to any gender shall include the other gender. References to persons shall include corporations and bodies corporate.

2. Quotation & Acceptance

- 2.1. We will provide a Quotation for all ongoing Services. The acceptance of our Quotation, electronically or otherwise, or the placement of an order, creates a legally binding Contract between the Company and the Client and includes the acceptance of these Terms and Conditions, which shall be incorporated in the Contract and apply between us.

- 2.2. These Terms and Conditions shall:
- 2.2.1. apply to and be incorporated in the Contract;
 - 2.2.2. apply to all dealings relating to the Services being supplied by us;
 - 2.2.3. and prevail over any terms or conditions contained in or referred to by the Client's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing, subject to clause 10 below.
- 2.3. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Company unless it is in writing and signed by a duly authorised representative of the Company.
- 2.4. The Client shall be responsible for the accuracy of any information submitted to us and for ensuring that our Quotation reflects the full requirements of the Client. Our Quotation is based on the information provided to us at the time of its preparation. Should any errors or discrepancies become evident which affect the order value of the Quotation, we reserve the right to make adjustments to it.
- 2.5. Our Quotation shall constitute our entire scope of works but may be subject to amendments as set out in the following terms.
- 2.6. Our Quotation will be valid for a period of 14 days only unless otherwise stated, and we may withdraw it at any time by giving notice to the Client.

3. Term

- 3.1. The Services shall commence on the Start Date and shall continue for an initial term of 12 months with a 3 month break clause unless otherwise stated in the Quotation. Thereafter, the Contract will be automatically renewed for successive 12 month periods (each being a separate Renewal Period) with 3 month break clause in accordance with the terms of this Contract (with the exception of the price which may change from time to time), unless a written notice to terminate is given by either Party in accordance with clause 9 below. Such notice is to be given a minimum of 30 days before the end of the then-current Period, and shall be effective only at the end of that Period. We will notify the Client of any such price increases in accordance with these Terms and Conditions.

4. Supply of Services

- 4.1. All Services will be carried out during our normal business hours of 9am - 5.30pm, Monday to Friday excluding public holidays in England, unless otherwise stated in the Quotation. Any works required outside of our normal business

hours may be subject to additional costs at our discretion. We will, however, endeavour to keep disruption to a minimum.

- 4.2. We warrant to the Client that all Services supplied under the Contract will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.
- 4.3. We will use our reasonable endeavours to carry out the Services in accordance with any timescales requested by the Client. However, this will be subject to the Client complying with clause 5.
- 4.4. Any supplied data, content or copy will be uploaded or imported by us exactly as we receive it. Unless explicitly included in the Quotation, it is the Client's responsibility to check for mistakes, including spelling and grammatical mistakes, and we accept no responsibility for the same.
- 4.5. Any additional Services must be authorised in advance by the Company and the Client in writing and will be chargeable at our Standard Rates applicable at the time.
- 4.6. We will provide our professional advice and recommendations in relation to the Services but we cannot accept responsibility for any actions taken as a result of such advice or recommendations, nor can we guarantee the success or outcomes of any marketing campaign or any of the other Services provided. Further, we shall not be liable for any consequences should any professional advice given by us or on our behalf not be taken.

5. Client's Obligations

- 5.1. The Client shall:
 - 5.1.1. provide us with such reasonable information and assistance as we may request to enable us to perform the Services;
 - 5.1.2. appoint a primary contact to liaise with us in connection with delivery of the Services. Should, for any reason, this primary contact become unavailable either temporarily or permanently, the Client will appoint another primary contact. However, any part of the Services agreed and instructed by the original primary contact shall not be open to material alteration unless the Client wishes to pay for the additional works;
 - 5.1.3. provide us with suitable and sufficient material and images to enable us to perform the Services;
 - 5.1.4. act in accordance with any and all reasonable instructions issued by us in relation to the Services. We shall not be liable for any failure to provide

the Services or any part thereof which arises out of the Client's failure to follow any such instructions;

- 5.1.5. virus-check all data and material supplied to us;
- 5.1.6. keep strong passwords and ensure they are regularly updated and secure from third parties;
- 5.1.7. obtain and maintain all necessary licences, permissions and consents in connection with the Services;
- 5.1.8. assume responsibility for repayment of any Forward Investment made by the Company in the event of cancellation of the Contract.
- 5.1.9. permit the Company to reference the Client's brand(s) in any promotional material and press releases that the Company may produce from time to time and the Client agrees to provide a written testimonial and reference for the Company's own promotional activities and to support any future bids the Company may undertake.

6. Payments

- 6.1. All Services provided under this Contract will be invoiced by us on a monthly basis, unless otherwise stated, throughout the duration of the Contract
- 6.2. If we either provide any additional services not included within the Services or provide the Services outside of our normal business hours at the request of the Client, then we shall be entitled to charge for the same at our then current hourly rate. We will advise the Client of all additional charges in advance.
- 6.3. All invoices are payable within 30 days from the date of invoice, without set-off, withholding or deduction.
- 6.4. All sums payable by either Party pursuant to the Contract are exclusive of VAT at the current rate or any other tax (except corporation tax), for which the Client shall be additionally liable. All payments by the Client shall be made in pounds sterling without any set-off, withholding or deduction. Any amendment to the standard VAT rate will be notified in writing and subsequent payments adjusted accordingly.
- 6.5. The Client shall reimburse us for any and all actual, reasonable travel expenses, any incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services.
- 6.6. Time for payment as set out in clause 6.3 shall be of the essence. If the Client fails to make payment in full on the due date or fails to comply with the Client's

obligations as listed in clause 4, then without prejudice to any other right or remedy available to us, we shall be entitled to:

- 6.6.1. appropriate any payment made by the Client to any outstanding sum;
- 6.6.2. charge interest on the amount outstanding from the due date to the date of receipt by us (whether before or after judgment), at the annual rate of 4% above the then current Bank of England base lending rate, accruing daily and compounded quarterly;
- 6.6.3. suspend all further provision of Services until the Client remedies the default;
- 6.6.4. not be held liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from our failure or delay in performing any of our obligations as a result; and
- 6.6.5. be entitled to claim for any costs or losses sustained or incurred by us arising directly or indirectly from the Client's default.

7. Variation

- 7.1. If the Client wishes to vary any other part of the Contract, the request for variation shall be sent to us in writing and must specify in detail the specific variation request. We shall respond to the Client as to whether we are prepared to agree to any change(s) and, if so, details of the cost of the change(s) and any effect on any other aspect of the Contract, including any change in timescales. The Client may accept such proposal within such time as we may specify or, if none is specified, within 14 days, failing which our proposal(s) shall be deemed rejected. Pending acceptance or rejection, we will continue to perform our obligations under the Contract without reference to the request.
- 7.2. If, due to circumstances beyond our control, we are required to make any change in the arrangements relating to the provision of the Services, we shall notify the Client immediately. We shall endeavour to keep such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.
- 7.3. Any agreed variation or amendment will be carried out in accordance with these Terms and Conditions and any price increase necessitated as a result of an agreed variation or amendment shall be payable in accordance with the terms for payment herein.

8. Our Obligations

- 8.1. We warrant that we will use all reasonable care and skill in fulfilling our obligations under the Contract and that all Company personnel have qualifications and experience appropriate for the tasks to which they are allocated.
- 8.2. If we receive written notice from the Client, after the Contract has commenced, of any breach of our obligations then we shall remedy the defect or error in question at our own expense and as soon as reasonably possible.
- 8.3. Our obligations are subject to the Client complying with its obligations under the terms of the Contract and shall also be subject to the limits and exclusions of liability set out in clause 10.

9. Cancellation & Termination

- 9.1. Upon acceptance of the Quotation, the Client shall no longer be entitled to cancel the Services to be provided, except with our agreement in writing and provided that the Client indemnifies us in full against all losses (including loss of profit), costs, damages, charges and expenses incurred by us as a result of the cancellation. Where the Client is an agency, the Client shall remain subject to these cancellation provisions, regardless of whether the Client's customer has cancelled their contract with the Client.
- 9.2. Subject to clause 9.1, either party may terminate this Contract:
 - 9.2.1. forthwith on giving notice in writing to the other if one party commits any serious and material breach of any term of this Contract and (in the case of a breach capable of being remedied) shall have failed to remedy the breach within 14 days after the receipt of the request in writing from the other to do so; or
 - 9.2.2. if the other party goes into bankruptcy, liquidation or administration either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation), or if a Receiver is appointed in respect of the whole or any part of its assets, or if the other Party ceases, or threatens to cease, to carry on its business.
- 9.3. We may terminate this Contract forthwith:
 - 9.3.1. if the Client fails to pay any sum due under the terms of this Contract and such sum remains unpaid for 14 days after we give written notice that such sum has not been paid;
 - 9.3.2. if we give the Client 30 days' written notice, whereby there will be no continuing liability by either Party.

- 9.4. The Contract cannot otherwise be cancelled and no refund will be provided and the Services will remain available to the Client until officially terminated.
- 9.5. Upon termination of this Contract for any reason, we will invoice the Client in full for the Fees relating to the Services as quoted and owing for the remainder of the Contract term and such sum shall become immediately due and payable.
- 9.6. Termination of the Contract, howsoever arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.
- 9.7. The rights to terminate this Contract provided by clause 9 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 9.8. Upon termination of the Contract for any reason, if we are holding any data for the Client including, but not limited to, backups, websites hosted by us, emails hosted by us and any other live data, we will retain such data for a period of 30 days from the date of termination. It is the Client's responsibility to retrieve such data if required within this timeframe. After 30 days, any such data will be securely destroyed.

10. **Limitation of Liability**

- 10.1. The following provisions set out our entire liability (including any liability for the acts or omissions of our employees) to the Client in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.
- 10.2. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 10.3. Nothing in these terms and conditions excludes, limits or seeks to exclude or limit our liability for death or personal injury caused by our negligence or fraud or fraudulent misrepresentation.
- 10.4. Subject to clause 10.3:
 - 10.4.1. we shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential losses, costs, damages, charges or expenses howsoever arising even if the loss is reasonably foreseeable or the Company has been advised of the possibility of the Client incurring it;
 - 10.4.2. our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in

connection with the performance or contemplated performance of the Contract shall be limited to the fees paid by the Client for the 3 months immediately surpassed of the Services;

10.4.3. we accept no responsibility whatsoever for third party services; and

10.4.4. we accept no responsibility whatsoever where our Services have been provided on a free/non-chargeable basis.

11. Intellectual Property Rights

11.1. The Client warrants that any document, logo or instruction furnished or given by them shall not cause us to infringe any letter patent, registered design or trade mark in the execution of these Services. The Client shall indemnify and keep us indemnified against all losses, damages, costs (including legal costs), claims and expenses incurred by us in connection with any claim for infringement of any third party Intellectual Property Rights which results from our use of any document, logo or instruction given to us by the Client.

11.2. The Client shall not be entitled to use any design or specification created during the provision of the Services until they have been handed over by us. Upon completion of the Services, and provided payment is made in accordance with the terms of payment herein, we will extend to the Client any Intellectual Property Rights belonging to us which may subsist in the design or specification created by us. However, we retain all Intellectual Property Rights which may subsist in the any Software provided by us.

11.3. Any Intellectual Property Rights we may grant shall be automatically revoked if the Client breaches any of these Terms and Conditions or if this Contract is cancelled or terminated in accordance with clause 9 above.

11.4. We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of any Intellectual Property Rights. The Client shall immediately bring to the attention of the Company any infringement or suspected infringement of any of the Intellectual Property Rights licensed hereunder of which it is aware and shall at the request and expense of the Company take such action or assist the Company in taking such action as the Company may deem appropriate to protect the Intellectual Property Rights.

11.5. We reserve the right to use any designs or specifications created by us, together with the Client's company name and logo, in any advertising or promotional material, publications, print, or for any other purpose required by us.

12. Confidentiality

- 12.1. Each 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 as such by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same expressly for the purpose of discharging its obligations under the Contract and shall ensure that such employees are subject to corresponding obligations of confidentiality.
- 12.2. All materials, drawings, specifications or data supplied by us to the Client shall at all times be and remain our exclusive property, but shall be held by the Client in safe custody at its own risk until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.
- 12.3. This clause 12 shall survive termination of the Contract, however caused.

13. No Employment

- 13.1. Nothing in this Contract shall render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.
- 13.2. Nothing in this Contract shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Neither Party shall have the authority to act in the name of or on behalf of, or otherwise to bind, the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

14. Non-Solicitation

- 14.1. The Client shall not, during the continuance of the Contract, or within 12 months of its termination or expiry, whether on behalf of itself or any third party, solicit or seek to entice away any employee of the other unless express permission is granted by the Company in writing. In the event of breach of this clause, the Client shall pay the Company a sum equal to six months gross pay of the employee concerned, being a pre-estimate of the cost of recruitment and training a replacement.

15. Data Protection

- 15.1. If any Personal Data (as defined by the Data Protection Act 1998) is passed to us under the Contract then the parties agree that the Client is the Data Controller and that we are the Data Processor.
- 15.2. We shall:

- 15.2.1. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body;
 - 15.2.2. implement appropriate measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure; and
 - 15.2.3. take reasonable steps to ensure the reliability and confidentiality of any of our personnel who have access to the Personal Data.
- 15.3. We may transfer and store Personal Data outside of the European Economic Area (“EEA”). If this is to occur, we will advise the Client in advance. The Client is entitled to request that Personal Data is not transferred or stored outside of the EEA, however the provision of alternative means may incur additional costs that would be chargeable to the Client.
- 15.4. The Company adheres to a comprehensive Data Protection Policy which is available from and updated from time to time at <https://www.zincdigital.com/gdpr>

16. Force Majeure

- 16.1. We shall not be liable to the Client for any breach of our obligations under the Contract if such breach is due to an act, event, omission or accident beyond our reasonable control (a “Force Majeure Event”) including but not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond our reasonable control.
- 16.2. If a Force Majeure Event occurs, we shall inform the Client as soon as possible and take all reasonable steps to mitigate the effects of the Force Majeure Event and resume performance of our obligations as soon as possible.

17. Waiver

- 17.1. No failure or delay by either Party in exercising any of its rights under this Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

18. Entire Agreement

- 18.1. The Contract constitutes the whole agreement between the parties and supersedes any and all previous agreements between the parties relating to its

subject matter. This Contract may only be amended by an express agreement between the parties signed by both Parties.

- 18.2. In entering into the Contract, the Client acknowledges that it does not rely on, and waives any claim for breach of, any such statement, representation, assurance or warranty (whether made negligently or innocently) which has not been confirmed in writing by an authorised officer of ours.

19. Assignment

- 19.1. The Client shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.2. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract, without the consent of the Client.

20. Survival on Merger or Acquisition

- 20.1. In the event the Client is acquired during the Minimum Period, or is the non-surviving party in a merger, or sells all or substantially all of its assets, this Agreement shall not be terminated, and the transferee or surviving company shall assume and be bound by the provisions of this Agreement.

21. Third Party Rights

- 21.1. The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, any other party.

22. Notices

- 22.1. Any Notice required to be given pursuant to this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post or by email to the address of the party as set out in these Terms and Conditions, or such other address as may be notified by one party to the other.
- 22.2. A Notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00am on the first business day following delivery). A correctly addressed Notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it should have been delivered by the recognised postal service. An email shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no “non-deliverable” notice is received by the sender.

23. Severance

- 23.1. In the event that one or more of the provisions of the Contract is found to be unlawful, invalid or otherwise unenforceable, that/those provision(s) shall be deemed severed from the remainder of the Contract. The remainder of the Contract shall be valid and enforceable.

24. Dispute Resolution Procedure

- 24.1. Any complaint or issue regarding the Services or any invoice must be made in writing within 14 days from the date of the issue or from the date of invoice. In the event of a dispute, the directors or other senior representatives of the parties with authority to settle the dispute will, within 14 days of a written request from one party to the other, meet promptly in good faith to resolve the dispute.
- 24.2. If the dispute is not resolved in accordance with clause 24.2, the dispute shall be referred to mediation and the mediator shall be appointed by the Centre for Dispute Resolution.
- 24.3. If no mediation takes place within 28 days of the request under clause 24.3, then the matter shall be referred to an expert, to be appointed, in default of agreement, on the request of either party to the President of the Law Society. He or she shall act as an independent expert and not as an arbitrator and his or her decision (including as to costs) shall, except in the case of manifest error, be final and binding upon us and the Client.

25. Governing Law & Jurisdiction

- 25.1. The Contract and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 25.2. Subject to the provisions of clause 24, any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.