

## Standard terms and conditions of business

Acceptance of quotation and payment of initial invoice will be taken as acceptance of the following terms and conditions. Please ensure you have read and fully understand what is written below. Please contact us if anything is not clear to you.

- 1) Any Contracts supplied by Utterly Social Ltd. shall be subject to the law of England and Wales. All disputes arising out of such Contracts shall be subject to the jurisdiction of the Courts of England and Wales.
- 2) All costs provided exclude VAT where applicable and are valid for thirty days from the date of the quotation.

These are the terms and conditions relating to the provision of Social Media Marketing Services agreed in the Social Media Marketing Retainer.

### WHEREAS:

- (1) The Client wishes to improve its presence on social media.
- (2) The Company is engaged in the business of providing social media marketing services.
- (3) The Client hereby engages the Company and the Company hereby accepts such engagement to provide the Social Media Marketing Services as described herein, subject to and in accordance with the terms and conditions of this Agreement.

### IT IS AGREED as follows:

#### 1. Definitions and Interpretation

1.1 In these Terms and conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Business means, any day (other than Day” Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England between 9am and 5pm except occasionally when closed for training or similar;

“Client Materials” means any and all materials, including but not limited to Photographs, Video, Quotes, Sales materials, technical specifications, which the Client

may provide to the Company for use in its provision of the Social Media Marketing Services;

“Confidential Information” means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with these Terms and conditions (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

“Intellectual Property Rights” means (a) any and all rights in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights), trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions; (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a); (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and (d) the right to sue for past infringements of any of the foregoing rights;

“Initial Fee” means the fee payable for the Initial Period of Social Media Marketing Services provision in accordance with Clause 6;

“Per-Period Fee” means the fee payable for each Subsequent Period of Social Media Marketing Services provision in accordance with Clause 6;

“Period” means either the Initial Period or a Subsequent Period, as defined in sub-Clause 2.2;

“Required Information” means information concerning the Client’s business and business activities required by the Company in order to provide the Social Media Marketing Services, as requested by the company which may include but

is not limited to, Logos, background, methods of working, advertising aims;

“Required Materials” means materials, including but not limited to Photographs, Video, Quotes, Sales materials, technical specifications, required by the Company in order to provide the Social Media Marketing Services;

“Social Media Content” means any and all content, including but not limited to Posts, Tweets, Chats, Blogs, created by the Company for publication on social media in the course of providing the Social Media Services under this Agreement;

“Social Media Marketing Services” means the social media marketing services to be provided by the Company to the Client in accordance with these Terms and conditions of the Agreement;

“the Agreement” means the Web services Agreement specifically in relation to social media marketing services which you sign or accept by email detailing company information, initial period and Fees for these services, in accordance with the terms and conditions of the Agreement, detailed herein.

1.2 Unless the context otherwise requires, each reference in these terms and conditions to:

1.2.1 “writing”, and any similar expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 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;

1.2.3 “these Terms and conditions” is a reference to these Terms and conditions as amended or supplemented at the relevant time;

1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and conditions.

1.2.5 a “Party” or the “Parties” refer to the parties to this Agreement and these Terms and conditions.

1.3 The headings used in these Terms and conditions are for convenience only and shall have no effect upon the interpretation of these Terms and conditions.

## 2. Engagement of the Company

2.1 The Client hereby engages the Company to provide the Social Media Marketing Services.

2.2 The Agreement shall enter into force on the date the agreement is signed “the Agreement date” and the Company shall commence the provision of the Social Media Marketing Services within 4 weeks of the agreement date, to be determined as required (“the Commencement Date”). The Company shall provide the Social Media Marketing Services for an Initial Term as specified in the Agreement unless left blank, in which case the term will be 12 months, (the “Initial Period”). The Agreement may be cancelled by offering a minimum of 3 months’ notice before the end of the initial period or the end of the Subsequent Period in accordance with clause 12.3. If it is not cancelled the contract will automatically renew for Subsequent Terms of 12 months until such notice is received (each a “Subsequent Period”) following the end of the Initial Term (collectively constituting the “Term” of the Agreement).

## 3. Provision of Services

3.1 With effect from the Commencement Date, the Company shall, throughout the Initial Period and any and all agreed Subsequent Periods, provide the Social Media Marketing Services to the Client.

3.2 The Company shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the social media marketing industry in the United Kingdom.

3.3 The Company shall act in accordance with the these Terms and conditions of the Agreement herein and with all reasonable supply of Services. Reasonable supply to be defined by the Company based on normal work carried out for all clients.

3.4 The Company shall be responsible for ensuring that it complies with all statutes, regulations, by-laws, standards, codes of conduct and any other rules relevant to the provision of the Services.

3.5 The Company shall use all reasonable endeavours to accommodate any reasonable changes to the Services that may be requested by the Client, subject to the Client’s acceptance of any related reasonable changes to the fees payable that may be due as a result of such changes.

#### **4. Social Media Marketing Services**

4.1 The Company shall provide the Services as described in this Clause 4.

4.2 The Client currently has an active presence or wishes to establish an active presence on the social media platforms listed in the Agreement:

4.3 The Company shall ensure that regular activity takes place on all of the social media platforms listed in the Retained Services Agreement.

4.4 The Company requires the Client's access credentials for the social media platforms set out above in order to provide the Services. The Client hereby agrees to provide the same before the Commencement Date.

4.5 The Client hereby authorises the Company to use the Client's above mentioned access credentials solely for the purposes of providing the Services. All such information is hereby designated Confidential Information and shall be treated accordingly, as described under Clause 11.

4.6 The Company shall produce and deliver to the Client reports detailing the status and progress of the social media marketing activities on each of the above mentioned social media platforms in a monthly report.

#### **5. The Client's Obligations**

5.1 The Company requires the following in order to provide the Social Media Marketing Services:

5.1.1 The Required Information about the Client and its day-to-day business activities, the purpose of social media marketing, any figurehead the business wishes to promote; and

5.1.2 The Required Materials for use in Social Media Content.

5.2 The Client shall provide the Required Information and the Required Materials to the Company by the 20th day of each month for the following month ("the Delivery Date").

5.3 The Company may from time to time require the Client's input or feedback on Social Media Content prior to its publication in the course of the Social Media Marketing Services. The Client shall use all reasonable endeavours to respond with the required feedback within 8 Business Hours.

5.4 In the event that any of the Required Information, or any other information supplied by the Client to the Company (including, but not limited to, the access credentials supplied under

sub-Clause 4.4) changes and such a change will materially affect the provision of the Social Media Marketing Services by the Company, the Client shall inform the Company of the same without undue delay.

#### **6. Fees and Payment**

6.1 In consideration of the Services the Client shall pay to the Company the Initial Fee as set out in the retained services agreement.

6.2 Payment of the Initial Fee shall be due within immediately of the date of the Agreement.

6.3 Payment of each Per-Period Fee shall be due monthly in advance with an invoice issued 5 days before the start date of the Subsequent Period to which it relates.

6.4 Without prejudice to sub-Clause 12.3.1 (termination for non-payment), any sums which remain unpaid following the expiry of the payment periods set out in this Clause 6 shall incur interest on a daily basis at 4% above the base rate of Barclays from time to time until payment is made in full of any such outstanding sums. This provision shall not apply to payments disputed in good faith.

#### **7. Intellectual Property Rights**

7.1 All Intellectual Property Rights subsisting in the Required Information, Required Materials, and in any other Client Materials shall at all times remain the property of the Client (or its licensors, as appropriate). Nothing in these Terms and conditions shall vest any rights in any material provided by, or otherwise belonging to the Client (or its licensors, as appropriate) in the Company. The Client hereby grants to the Company a limited, non-exclusive, non-transferable, revocable, worldwide licence to use any and all Required Information, Required Materials and any other Client Materials for the purposes of providing the Services in accordance with these Terms and conditions.

7.2 Upon receipt in full by the Company of all sums due for a given Period under Clause 6, the copyright and any and all other Intellectual Property Rights subsisting in the Social Media Content created by the Company during that Period shall be assigned to the Client and the Company shall be deemed to have waived any and all moral rights in respect of the same.

The Company shall execute all documents and take all actions necessary or reasonably requested by the Client to document, obtain, maintain, perfect or assign its rights in such content.

## 8. Indemnity

8.1 The Client (as an "Indemnifying Party") hereby undertakes to indemnify the Company (as an "Indemnified Party") and to keep the Company at all times fully indemnified from and against all losses arising as a result of any action or claim that the Company's use of any Required Information, Required Materials or other Client Materials in the course of providing the Services constitutes an infringement of any Intellectual Property Rights belonging to a third party.

8.2 In the event of an action or claim arising as under sub-Clauses 8.1, the Indemnifying Party shall have complete control over the litigation and/or settlement of the action or claim and shall keep the Indemnified Party fully informed of the same at reasonable intervals.

8.3 In the event of an action or claim arising as under sub-Clauses 8.1, the Indemnified Party shall:

8.3.1 Notify the Indemnifying Party immediately in writing upon becoming aware of the action or claim;

8.3.2 Make no admissions or attempt any settlements of the action or claim without the express written consent of the Indemnifying Party;

8.3.3 Provide the Indemnifying Party with all reasonable information and assistance reasonably required by the Indemnifying Party, at the Indemnifying Party's cost, with respect to the action or claim; and

8.3.4 Allow the Indemnifying Party complete control over the litigation and/or settlement of the action or claim.

## 9. Warranties

9.1 Each Party hereby warrants to the other that it has the full power and authority to enter into the Agreement, these Terms and conditions and to perform its respective obligations hereunder.

9.2 The Client represents, warrants, undertakes and agrees with the Company that the Required Materials and any other Client Materials shall be original to the Client (or that, where any Required Materials or other Client Materials are provided by

a third party, it has received the necessary consents or permissions to use the same) and shall not infringe any Intellectual Property Rights belonging to a third party.

9.3 The Client represents, warrants, undertakes and agrees with the Company that the Required Materials and other Client Materials shall not, under the laws of England and Wales, be obscene, blasphemous, offensive to religion, or defamatory of any person and shall not contain any material that has been obtained in violation of the Data Protection Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Official Secrets Act 1989, or any similar domestic or foreign legislation and nothing contained in the Required Materials or other Client Materials will, if published, constitute a contempt of court.

## 10. Limitation of Liability

10.1 Subject to sub-Clause 10.2, neither Party shall be liable to the other for any loss of profit, indirect, special or consequential loss or damages.

10.2 Nothing in these Terms and conditions shall exclude or limit either Party's liability for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation, any breach of Clause 11, the indemnities in sub-Clause 8.1, or other form of liability that cannot be excluded or limited by law.

10.3 Subject to sub-Clause 10.1 and 10.2, each Party's total liability to the other in respect of any claims arising out of, or in connection with, the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed the total sums paid or payable by the Client to the Company in the 6 months prior to the claim, or £1,500 (One thousand and five hundred Pounds), whichever is greater.

## 11. Confidentiality

11.1 Each Party undertakes that, except as provided by sub-Clause 11.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for 12 months after its termination or expiry:

11.1.1 keep confidential all Confidential Information;

11.1.2 not disclose any Confidential Information to any other party;

11.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of these Terms and conditions;

11.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

11.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 11.1.1 to 11.1.4 above.

11.2 Either Party may:

11.2.1 disclose any Confidential Information to:

11.2.1.1 any governmental or other authority or regulatory body; or

11.2.1.2 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies; to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the provision of the Social Media Marketing Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 11.2.1.1 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 11, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

11.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

11.3 The provisions of this Clause 11 shall continue in force in accordance with their terms for a period of 12 months after the termination or expiry of the

Agreement, notwithstanding the termination of the Agreement for any reason.

## 12. Term and Termination

12.1 The Agreement and these Terms and conditions shall enter into force on the agreement date and shall continue for an Initial Term of as specified in the agreement or 12 months if left blank. The Agreement will be renewed by for Subsequent Terms of 12 months following the end of the Initial Term. As described in sub-Clause 2.2, all such periods shall collectively constitute the Term of the Agreement and these Terms and conditions.

12.2 The Company may terminate this agreement at any time by giving 1 months' notice to the Client for any reason.

12.3 The Client may terminate this Agreement no sooner than three months before the end of the Initial or Subsequent term (specific to the one they are in) by giving written notice, not to expire before the end of that Initial or Subsequent term.

12.4 Without prejudice to any other right or remedy available to it, either Party may terminate this Agreement forthwith by giving written notice to the other Party in the following circumstances:

12.4.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 20 Business Days of the due date for payment;

12.4.2 the other Party commits any other breach of any of the provisions of the Agreements terms and conditions and, if the breach is capable of remedy, fails to remedy it within 30 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

12.4.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

12.4.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

12.4.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or reconstruction and in such a manner that the



company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);

12.4.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

12.4.7 that other Party ceases, or threatens to cease, to carry on business

12.5 The Company may terminate the agreement if the Client is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 12, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010

12.6 The Client may not terminate the agreement if the Client is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 12, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010

12.7 For the purposes of sub-Clause 12.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

### **13. Effects of Termination**

Upon the termination or expiry of the Agreement for any reason:

13.1 any sum owing by either Party to the other under any of the provisions of these terms and conditions shall become immediately due and payable; for the avoidance of doubt this includes any outstanding amount payable by the Client to the Company for the remaining months of the current term or notice period.

13.2 all licences granted to the Company by the Client to use the Required Information, Required Materials, any and all other Client Materials shall terminate immediately;

13.3 the Company shall, at the Client's request, either promptly return or destroy all Required Information, Required Materials, and other Client Materials in its possession and/or control and shall issue a certificate of such return and/or destruction;

13.4 each Party shall (except to the extent 15. referred to in Clause 11) immediately cease to use, either directly or indirectly, any Confidential Information belonging to the other Party (including, but not limited to, the Client's access credentials as referenced in sub-Clauses 4.4 and 4.5 and shall at the other Party's request, either promptly return or destroy all such Confidential Information in its possession and/or control and shall issue a certificate of such return and/or 16. destruction;

13.5 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;

13.6 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement and its terms and conditions which existed at or before the date of termination;

13.7 subject as provided in this Clause 13 and 13.1 except in respect of any accrued rights neither Party shall be under any further obligation to the other.

### **14. Force Majeure**

14.1 Neither Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are 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 the control of the Party in question.

In the event that the Company cannot perform their obligations hereunder as a result of force majeure for a continuous period of 3 months, the other Party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all work completed up to the date of termination. Such payment shall take into account

any prior contractual commitments entered into in reliance on the performance of the Agreement.

### **15. No Waiver**

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

### **16. Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of these terms and conditions into full force and effect.

### **17. Costs**

Subject to any provisions to the contrary each Party to the Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of these terms and conditions.

### **18. Relationship of the Parties**

Nothing in the Agreement or these terms and conditions 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 Agreement.

### **19. Notices**

19.1 All notices under these terms and conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

19.2 Notices shall be deemed to have been duly given:

19.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

19.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or

19.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

19.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, notified to the other Party.

### **20. Entire Agreement**

20.1 These terms and conditions contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

20.2 Each Party acknowledges that, in entering into the Agreement and accepting these terms and conditions, it does not rely on any representation, warranty, assurance or other provision (made innocently or negligently) except as expressly provided in these terms and conditions.

### **21. Severance**

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

### **22. Alternative Dispute Resolution**

22.1 Any dispute or difference arising between the Parties relating to the Agreement or its subject matter shall be referred to a single arbitrator to be agreed upon by the Parties or, failing such agreement, to be appointed by the then President of the Law Society, such arbitrator to have all of the powers conferred upon arbitrators by the laws of England and Wales.

22.2 The Parties hereby agree that the decision of the Arbitrator shall be final and binding on both Parties.

### **23. Law and Jurisdiction**

23.1 The Agreement (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.



23.2 Subject to the provisions of Clause 22, any dispute, controversy, proceedings or claim between the Parties relating to terms and conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.