

General Terms and Conditions

1 Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the terms on the signature page shall have the meaning set out alongside them and the following words and expressions shall have the following meanings:

“**Additional Charges**” means the charges to be calculated by Distant Media on a time and materials basis at its then prevailing rates; “**Agreement**” means the terms and conditions set out on the signature page, these General Terms and Conditions, and any Schedules attached hereto;

“**Bespoke Boards**” means those boards produced by Distant Media pursuant to clause 3;

“**Business Day**” means between the hours of 09.00 and 17.00 Monday to Friday (inclusive) other than English public holidays;

“**Charges**” means the Additional Charges, the Initial Charge and the Early Termination Fee;

“**Corporate Boards**” means any and all boards used by the Customer to advertise or promote the service other than the Bespoke Boards;

“**Customer Sale Boards**” means any and all boards and advertising ordinarily used by the Customer from time to time to advertise commercial and/or domestic properties for sale and/or let and which are located at or are attached to such properties for sale or rent; “**Customer Trademark**” means the trading name, get up and logo used by the Customer from time to time in its ordinary course of business;

“**Customer Website**” means the Customer’s website from time to time;

“**Distant Media Trademark**” means the mark “24 Hour Price Check” together with any other mark notified to the Customer by Distant Media from time to time;

“**Distant Media Website**” means the website controlled by or on behalf of Distant Media which is currently located at url www.distantmedia.co.uk or any other url notified to the Customer by Distant Media from time to time;

“**Early Termination Fee**” means the total of the Charges that would have been paid for the Term less those amounts actually received by Distant Media;

“**Effective Date**” means the date of the last signature on the signature page overleaf;

“**Existing Properties**” means any and all properties for which the Customer has received instructions to and is advertising as at the Effective Date;

“**Existing Property Codes**” means those codes which are unique to and identify each Existing Property and which are made available on the Distant Media Website;

“**Existing Property Details**” means all necessary details which the Customer has in its possession which identify and relate to each Existing Property;

“**Initial Charges**” means those charges set out on the signature page;

“**Services**” means the provision to allow third party telephone users to receive certain information via electronic media relating to Existing and Subsequent Properties, the format and charges for which shall be determined by Distant Media from time to time;

“**Service Live Date**” means the date from which the Supplier is able to provide the Services pursuant to clause 2.1;

“**Subsequent Properties**” means any and all properties for which the Customer has received instructions to advertise after the Effective Date;

“**Subsequent Property Codes**” means those codes which are unique to and identify each Subsequent Property and which are made available on the Distant Media Website;

“**Subsequent Property Details**” means all necessary details which the Customer has in its possession which identify and relate to each Subsequent Property;

“**Third Party Provider**” means the third party, from time to time, with whom Distant Media selects to assist it to provide the service;

“**24 Hour Boards**” means the Corporate Boards and the Bespoke Boards either individually or collectively as the case may be;

“**24 Hour Price Check**” together with any other mark notified to the Customer by Distant Media from time to time.

1.2 A reference to a Clause, sub-clause and Schedule shall mean a Clause, sub-clause or Schedule of this Agreement.

Except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting any genders include all genders and words denoting persons include firms and corporations and vice versa.

1.4 All references to a statute or statutory provision shall be construed as including references to any modification, consolidation or re-enactment for the time being in force.

1.5 Headings to Clauses in this Agreement are inserted for convenience of reference only and should not be construed as forming part of this Agreement.

2. Services Set Up

2.1 The Customer hereby appoints Distant Media as its exclusive provider of the Services and further acknowledges that the commencement of the Services is subject to Distant Media having access to the Initial Property Details. Such access shall be provided by (i) the Customer permitting Distant Media to gain necessary access to the Customer’s Software to set up and enable automatic retrieval of the Existing Property Details or (ii) the Customer inputting the Existing Property Details directly on to the Distant Media Website (instructions for such and passwords will be provided to the Customer by Distant Media on request).

2.2 Subject always to the provisions set out in clause 6 Distant Media shall notify the Customer of the date on which the Services shall commence (“Service Live Date”).

3. Services and Data Collection

3.1 Subject to receipt in full of the Charges and the Property Details Distant Media shall use its reasonable endeavours to provide the Services in accordance with this Agreement.

3.2 The Customer acknowledges that any and all data provided by third party users of the Services will be collected by Distant Media and held pursuant to the provisions of the Data Protection Act 1998. Accordingly such data shall belong exclusively to Distant Media.

3.3 Distant Media shall permit the Third Party Services Provider with access to the Property Details via the Distant Media Website.

4. Customer Obligations

4.1 The Customer is responsible for and shall ensure, at all times throughout the Term that;

4.1.1 the correct Existing Property Codes and Subsequent Property Codes (as appropriate) are clearly and permanently marked on all Boards;

4.1.2 it allows Distant Media necessary access to the Customer’s Software to enable automatic retrieval of the Property Details or constantly updates the Distant Media Website (instructions for such and passwords will be provided to the Customer by Distant Media on request) with Subsequent Property Details;

4.1.3 the correct 24 Hour Boards are permanently affixed to the appropriate Customer Sale Boards in respect of all Existing and Subsequent Properties;

4.1.4 no Customer Sale Boards shall be used by or on behalf of the Customer without 24 Hour Boards. In the event of Distant Media becoming aware that Customer Sale Boards are being used without 24 Hour Boards, the Customer hereby permits Distant Media to have attached appropriate Bespoke Boards to such Customer Sale Boards and to invoice the Customer for any Additional Charges it incurs in relation to the same;

4.1.5 it submits all intended use of the Distant Media Trademarks to Distant Media within sufficient time for Distant Media to review such use and to provide the Customer with approval or reasons for not granting approval. All such submissions shall be in writing and include full details of all intended use. Distant Media shall not unreasonably withhold or delay its response to the Customer. If Distant Media does not grant approval, then Customer shall be entitled to submit a revised intention of use for Distant Media’s approval;

4.1.6 the Existing and Subsequent Property Details (including but not limited to property prices) is accurate, complete and true and is in accordance with all relevant legislation (including but not limited to the Property Misdescriptions Act 1991);

4.1.7 it complies with all relevant legislation (including but not limited to the Town and Country Planning Regulations) in respect of the use and positioning of the Customer Sale Boards and the 24 Hour Boards.

4.2 The Customer acknowledges that Distant Media shall not be liable to the Customer for any reasonable delay in providing its approval nor for any liability in respect of it not approving the submissions referred to in clause 4.1.5.

4.3 Irrespective of clauses 4.1.5 and 4.2, the Customer acknowledges that it is solely responsible for the use of the Customer Sale Boards and the 24 Hour Boards together with any content included thereon and further that Distant Media (other than the Distant Media Trademark) has no liability for the same whatsoever.

4.4 If the Customer receives any complaints in respect of third parties use of the Services, then it shall immediately notify Distant Media of the same and such notification shall include full details of any such complaint and all correspondence relating thereto.

4.5 In accordance with the Customer’s appointment in clause 2.1, the Customer shall not (during Term and for 2 years thereafter) directly or indirectly obtain the Services (or any similar services) from any party other than Distant Media.

5. Trademarks

5.1 Distant Media hereby grants to the Customer a non-exclusive right to use the Distant Media Trademark during the Term for use only on the 24 Hour Boards and related advertising. Such use is always subject to the approval provisions set out in clause 4.1.5.

5.2 The Customer hereby grants to Distant Media a non-exclusive right to use the Customer Trademark during the Term and for use on the Distant Media Website and any related advertising.

6. Boards

6.1 In respect of either Existing Properties and/or Subsequent Properties, if the Customer requires Bespoke Boards for such, it shall make a written request for the same to Distant Media, who shall, following receipt of such written request and on receipt of payment of any Additional Charges in respect of such request, use its reasonable endeavours to have such Bespoke Boards produced on behalf of the Customer within a reasonable period of time.

6.2 Incorporated in any request pursuant to clause 6.1, the Customer shall include a full list of all Existing and/or Subsequent Property Details together with full details of their corresponding Existing and/or Subsequent Properties.

7. Suspension of Services

7.1 The Customer acknowledges that the Services are partly provided by a Third Party Provider and further accepts that the Services may from time to time be adversely affected (other than force majeure events referred to and dealt with in clause 14) by restrictions placed upon the Third Party Provider by the telephone network companies used to provide the Services. Distant Media shall notify the Customer within a reasonable period of time of it being notified by the third party providers of any such restrictions.

7.2 Distant Media may, (without prejudice to its rights in this Agreement) where reasonable and from time to time, suspend the Services in any of the following circumstances;

7.2.1 during any technical failure, modification or maintenance of the telecommunications systems operated or used by the Third Party Provider; or

7.2.2 if the Customer fails to comply with the terms of this Agreement after being given written notice of said failure (including but not limited to failure to pay the Charges) until such failure to comply is remedied to the satisfaction of Distant Media; or

7.2.3 if the Customer carries out or fails to carry out (or allows any third party to do so) any action that, in the sole discretion of Distant Media may have the effect of jeopardising the provision of the Services.

8. Charges and Payment

8.1 The Customer shall, without deduction or set off, pay to Distant Media the Initial Charges on the execution of this Agreement.

8.2 Distant Media shall submit invoices to the Customer in respect of all Charges from time to time.

8.3 Distant Media’s invoices shall be payable by the Customer within 14 Business Days of the date of such invoice, without deduction or set off.

8.4 Should the Customer have any query over the content of any invoice issued by Distant Media it shall notify Distant Media within 5 Business Days of the date of the relevant invoice, failing which, the Customer is deemed to accept such invoice as valid and correct.

8.5 Distant Media shall be entitled to charge interest on an overdue amount at 4% above the base rate from time to time of the Bank of Scotland plc (or its successor) as well after as before judgement, and until the overdue amount has been paid in full together with any interest thereon. Interest shall be calculated on a daily basis and compounded monthly.

8.6 All amounts stated are exclusive of VAT which shall be paid by the Customer at the then prevailing rate.

8.7 Distant Media shall give the Customer at least 60 days notice of any change to the Charges. Following service of such notice, the Customer may terminate this Agreement by not less than 30 days notice to Distant Media before expiry of such 60 days, otherwise it shall be deemed to have accepted the revised Charges.

8.8 Distant Media may, in its sole discretion, refund the Charges, if in its sole discretion, it determines that its suspension pursuant to Clause 7 was unjustified. Any such refund shall be pro rata on a time spent basis, assuming 365 days in a calendar year and will only be in respect of those Charges that have been paid in full to Distant Media.

9. Warranties

9.1 The Customer shall at all times (notwithstanding termination of this Agreement) be liable for, indemnify and hold harmless Distant Media against all and any liability, loss, damage, costs (including legal costs), professional and other expenses of any nature incurred or suffered by Distant Media arising out of Distant Media’s use of the Customer Trademark and the Customer performance or non-performance of this Agreement.

10. Limitation of Liability

The Customer’s attention is drawn to this clause 10 which seeks to limit Distant Media’s liability.

10.1 Save and to the extent set out in this Clause 10, Distant Media shall not have any liability to the Customer in respect of any breach of its contractual obligations arising under this Agreement and any representation, statement, tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with this Agreement.

10.2 Distant Media’s liability to the Customer;

10.2.1 for death or injury resulting from Distant Media’s own negligence or that of its employees or for fraudulent misrepresentation shall not be limited;

10.2.2 subject to Clauses 10.2.1 and 10.2.2, all other loss or damage arising out of or in connection with this Agreement shall not exceed the Charges received by Distant Media for the 12 month period to which such loss or damage relates.

10.3 Subject to Clause 10.2.1 Distant Media shall not have any liability to the Customer unless a claim is brought within 6 months of the date the Customer was or ought to have been aware of the circumstances giving rise to the claim.

10.4 Subject to Sub-Clause 10.2.1, Distant Media shall not be liable to the Customer for; loss of reputation; loss of profit; loss of goodwill; loss or corruption of or damage to data; any type of special, indirect or consequential loss or damage irrespective of whether the Customer has been advised of the possibility of such or damage.

11. Term and Termination

11.1 This Agreement shall come into force on the Effective Date and shall continue in force for a period of 24 months and shall be automatically extended for further periods of 24 months unless terminated in accordance with this clause 11.

11.2 The Customer may terminate this Agreement without cause;

11.2.1 at any time during the period of 10 Business Days prior to the anniversary of the Term or any 24 month extension thereof by giving 5 Business Days notice to Distant Media subject always to the payment in full of;

(i) any Charges outstanding at the time such notice is served; and

(ii) the Early Termination Fee.

11.3 Distant Media shall be entitled to terminate this Agreement forthwith by written notice to the Customer if the operation of the third party telecommunications system by means of which the Services are provided is terminated or the services provided by means of that system are discontinued for any reason or if the Third Party provider is unable to provide the services required for the provision of the Service.

11.4 Either Party may terminate this Agreement immediately by notice in writing to the other if;

11.4.1 the other commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied, other than late payment of the Charges) shall not have been remedied within 30 Business Days of a written request to remedy the same;

11.4.2 non-performance pursuant to Clause 14 continues for more than 3 consecutive months.

12. Effect of Termination of this Agreement

12.1 Any termination of this Agreement shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provisions hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

12.2 Upon termination;

12.2.1 all Charges shall immediately fall due and payable; and

12.2.2 the rights granted to the Customer to use the Distant Media Trademark shall immediately cease and the Customer shall not make, nor shall it permit any third party to make any further use of the same whatsoever.

12.3 Upon termination Distant Media will:

12.3.1 cease the provision of the Services;

12.3.2 prepare and submit to the Customer a breakdown of all Services provided up to the date of termination;

12.3.3 deliver an invoice in respect of the Charges for the Services referred to in sub-clause 12.3.2;

12.4 Within 7 days of the date of Distant Media’s invoice pursuant to sub-clause 12.3.3, the Customer shall make payment in full to Distant Media in respect of such invoice

13. Force Majeure

A party will be excused from performance of its obligations under this Agreement (other than payment of the Charges) if and to the extent that such performance is hindered or prevented directly or indirectly by reason of any strike, lock-out, labour disturbance, government action, riot, armed conflict, accident, unavailability or breakdown of normal means of transport, interruption in power supply or telecommunications or defective computer equipment. Act of God or any other matter whatsoever beyond its control (having acted reasonably and prudently).

14. No Right of Set-Off

All amounts due under this Agreement shall be paid in full without any deduction or withholding other than as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Distant Media in order to justify withholding payment of any such amount in whole or in part.

15. Notices

Any notice, request, instruction or other document to be given by a party under this Agreement shall be in writing and delivered by hand, sent by pre-paid first class post, by facsimile transmission or other electronic means to the recipient’s usual fax number or email address or such other address, fax number or email address which may be notified by that party from time to time for this purpose.

A notice shall be deemed to have been received if delivered by hand, at the time of delivery, if sent by facsimile or other electronic means during the Business Day of transmission as long as the sender can show confirmation of satisfactory transmission; and if sent by post, 48 hours after posting.

16. General

16.1 This Agreement constitutes the whole agreement and understanding of the parties and supercedes all prior agreements, representations (other than fraudulent representations), arrangements and understandings in relation to its subject matter and it cannot be changed unless in writing by an authorised representative on behalf of each party.

16.2 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

16.3 This Agreement is personal to the Customer which shall not assign or transfer any of its rights and/or obligations under it without the prior written consent of Distant Media.

16.4 Time shall not be in the essence save with regard to the Charges and Payment provisions in Clause 8.

16.5 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part then this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

16.6 The waiver by either party of a breach or default of any of the provisions of this Agreement shall not be construed as a waiver of any succeeding breach nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as waiver of any breach or default by the other party

17. Governing Law

17.1 This Agreement shall be governed by and construed in accordance with English law.

