

## 365 Digital Media Advertising and Sponsorship Terms and Conditions

30 November 2006

These **365 Digital Media** Advertising and Sponsorship Terms and Conditions (“Ts & Cs”) apply to all advertising and sponsorship that is placed or agreed to be placed by **365 Digital Media** Media Limited, a company registered in England and Wales under company number 3619904 (collectively, “**365 Digital Media**”) on interactive properties represented by **365 Digital Media** (“**365 Digital Media** Properties”). Anyone agreeing an Insertion Order for, or otherwise requesting or agreeing to the placement of, advertising or sponsorship on **365 Digital Media** Properties (an “Advertiser”) is deemed to agree to these Ts & Cs. **365 Digital Media** does not permit any other terms or conditions to apply to such advertising or sponsorship. An Insertion Order that is expressly agreed by **365 Digital Media** is referred to as an “IO” below. An IO in combination with these Ts & Cs constitutes an “Agreement”. If an Agency is identified in and enters into an IO, it is treated as the Advertiser for the purposes of these Ts & Cs.

### 1. Placement of Advertising and Sponsorship

- a. **365 Digital Media** agrees to place on **365 Digital Media** Properties:
  - i. advertisements specified in an IO and that comply with these Ts & Cs (“Advertising”), or
  - ii. sponsorship specified in an IO that complies with these Ts & Cs (“Sponsorship”).Advertising and Sponsorship are collectively referred to as “Placements” in these Ts & Cs.
- b. Unless otherwise expressly agreed in the relevant IO, timing and positioning of Placements shall be at the discretion of **365 Digital Media**, and shall appear on such **365 Digital Media** Properties as may be selected by **365 Digital Media**.
- c. Advertiser undertakes to provide to **365 Digital Media**, at Advertiser’s expense and at least three working days prior to the planned commencement date of the relevant Advertising or Sponsorship, all creative and other materials which are to be included in the Advertising or Sponsorship (collectively, “Materials”). The Materials shall be provided in such format, and by such means of submission, as **365 Digital Media** specifies from time to time. **365 Digital Media** shall be entitled to dispose of any Materials delivered to it unless acceptable prepaid return arrangements have previously been made between **365 Digital Media** and Advertiser. For the purposes of the Agreement, “working day” means a day other than Saturdays, Sundays and public holidays in England and Wales.
- d. Advertiser may provide creative updates for Advertising or Sponsorship, consistent with **365 Digital Media**’s above requirements, at any time at no additional cost. **365 Digital Media** will arrange for the placing of such updates within a reasonable time after receipt from Advertiser.
- e. **365 Digital Media** will use reasonable endeavours to ensure that **365 Digital Media** Properties do not normally feature material that is or may reasonably be considered to breach the law or third parties’ rights.

### 2. Payment

- a. Save as otherwise expressly agreed in the relevant IO:
  - i. For Advertising, **365 Digital Media** will invoice the Advertiser the Net Charges specified in the IO:
    1. after the relevant Campaign has completed, or
    2. pro-rated in equal monthly instalments as specified in the IO during the Campaign if it is of two months or more duration; and
  - ii. For Sponsorship, **365 Digital Media** will invoice the Advertiser the Net Charges specified in the IO, as follows:
    1. as to 50%, following signature of the IO; and
    2. as to the remaining 50%:
      - a. after the completion of the relevant Campaign of Sponsorship; or
      - b. pro-rated in equal monthly instalments during the Campaign if it is of two months or more duration ,provided that **365 Digital Media** shall be entitled to require payment in advance of the Net Charges for the entirety of the Advertising ordered under an IO, where that is the first **365 Digital Media** IO entered into by the Advertiser or it has not been approved by **365 Digital Media**’s finance department for credit.
- b. A “Campaign” is the measurable quantum of Placement specified in the IO; a Campaign will be completed when the following “Completion Criteria” have been met:
  - i. for Advertising, after the number of impressions on the **365 Digital Media** Properties specified in the IO for that Advertising have been delivered; and

- ii. for Sponsorship, after the Sponsorship has been carried:
  - 1. for the period, and
  - 2. on the **365 Digital Media** Property/iesspecified in the IO for that Sponsorship,

save as provided in Clause 4 d., 10 a., and 10 d. of these Ts & Cs.

- c. All invoices shall be paid within 30 days of invoice date. If any are unpaid, **365 Digital Media** shall have the right, in its sole discretion, to discontinue all Placements pending the Advertiser's payment of all sums that are due. Advertiser will be responsible for all reasonable expenses (including legal fees) incurred by **365 Digital Media** in collecting unpaid amounts; and **365 Digital Media** shall be entitled to require Advertiser to pay interest at the rate of three per cent above the then-current annual base rate of HBOS Bank from the date of the relevant invoice until the actual date of payment.
- d. In the event that any taxes (such as Value Added tax) are required to be paid on sums specified in an IO, such taxes shall be assumed and paid by Advertiser in the amount and manner specified by law.

### 3. Reporting

- a. **365 Digital Media** uses third party ad-serving software ("Ad Software") to report on the number of impressions on **365 Digital Media** Properties where Advertising appears.
- b. The performance of Campaigns [of Advertising], even if third party hosted, will be based on the Ad Software statistics.
- c. After a Campaign [of Advertising] (or any re-run under sub-Clause i. below) has completed, **365 Digital Media** will send to the Advertiser a report generated by the Ad Software detailing how the criteria for completion of the Campaign have been satisfied (the "Completion Report"). The Advertiser acknowledges that the Completion Report will be conclusive as to the satisfaction of the relevant Completion Criteria, unless within seven days of the date of the Completion Report the Advertiser provides to **365 Digital Media** information that demonstrates, using industry standard technology or criteria, that the relevant Completion Criteria had not been satisfied. If such information shows to **365 Digital Media's** reasonable satisfaction that the Completion Report in question was incorrect and that the relevant Completion Criteria had not been satisfied, **365 Digital Media** will (in its discretion) either:
  - i. Re-run the Campaign until the Completion Criteria for it have been satisfied (disregarding any timing requirements for that Campaign); or
  - ii. Credit to the Advertiser a commensurate pro-rated proportion of the amount payable for the Campaign.
- d. If so requested by an Advertiser, **365 Digital Media** will issue the Advertiser with one login to the Ad Software for each campaign of Advertising. This login will allow the Advertiser to have access to information regarding the day-to-day activity of an Advertising campaign.

### 4. Content of Advertising

- a. Advertiser undertakes that it is, and will continue to remain, entitled to include each Placement, and to authorise **365 Digital Media** to include each Placement, on **365 Digital Media** Properties in accordance with the Agreement.
- b. Advertiser undertakes that each Placement, all of its content and any web-sites or other properties linked to from it do not and will not appear to (a) infringe any applicable law, rule, regulation, standard or code (including, without limitation, any promulgated by the United Kingdom Advertising Standards Authority or any equivalent entity in any jurisdiction in which such advertisement is accessible), (b) infringe the rights of any person or entity, nor require payment (including mechanical royalty or performing rights payments for use of music, union payments, rental right payments, author royalties or trade mark royalties) to be made, (c) infringe exclusive sponsorship rights, whether in relation to a sporting event or competition or otherwise, apparently held by a third party, (d) fail to conform to restrictions on the material that may appear therein, as expressed in the IO or in any communication received by the Advertiser from **365 Digital Media**, whether in writing, by email or orally, or (e) contain any virus, worm, Trojan horse or other contaminant that may be used to access and modify, delete or damage any data file or other computer program.
- c. Advertiser agrees to indemnify and keep indemnified each of the **365 Digital Media** Parties and their respective officers and employees against all claims, demands, liabilities, costs and expenses, including reasonable legal fees on a solicitor and client basis, arising in connection with any breach of sub-Clause a. or b. above, or any other provision of the Agreement.
- d. **365 Digital Media** shall be entitled to remove from **365 Digital Media** Properties without notice and without compensation to the Advertiser any Placement that appears (in **365 Digital Media's** or any notifying person's reasonable opinion) to

contravene sub-Clause b. or c. above. In such event, **365 Digital Media** shall be entitled to invoice the Advertiser for the remainder of the Campaign as if the Completion Criteria for it had been entirely met.

- e. Unless **365 Digital Media** agrees otherwise in writing, Advertiser shall not be entitled to access or use, and shall gain no rights in, any information collected by **365 Digital Media** concerning users of **365 Digital Media** Properties on which any Placement appears (such as, without limitation, personal data and identifiers, transactional information, click-stream data and demographic data).

5. **Restrictions**

- a. Advertiser may not resell, assign or transfer any of its rights (including, without limitation, the right to place any advertising) or obligations under the Agreement without **365 Digital Media's** prior written consent.
- b. Each party shall comply with such duties (including, without limitation, any as to privacy, confidentiality or data protection) as it may owe in respect of any information that comes into its possession or control in connection with any Advertising or other activity conducted under an IO.

6. **Objectives**

Except as may be contained expressly in an IO, Advertiser acknowledges that:

- a. no undertaking is given as to the number of impressions, clicks or other events that may occur in relation to any Placement; and
- b. any proposed objectives, target audience or proposed tactics are indicative only, and **365 Digital Media** does not commit to them.

7. **Confidentiality**

- a. Each party ("Disclosee") shall keep confidential all Confidential Information of the other party ("Discloser") and shall not disclose any such Confidential Information save to such employees, agents or sub-contractors of the Disclosee who need to know the same for the purposes of this Agreement.
- b. For the purposes of this Clause, "Confidential Information" means all information which is expressed to be or ought reasonably to be regarded as the confidential information of the Discloser (including, without limitation, business or financial details and arrangements of the Discloser).
- c. Advertiser agrees that it shall not object to **365 Digital Media** conducting advertising research using data provided by or relating to Advertiser, to be used in aggregate.

8. **Warranties**

Save to the extent that they are expressed in this Agreement, all representations, conditions, warranties and terms relating to the services provided by **365 Digital Media** under or in connection with this Agreement (whether statutory or otherwise, and including, without limitation, any as to the fitness for a particular purpose, satisfactory quality or merchantability of any thereof) are hereby excluded by **365 Digital Media** to the fullest extent permitted by law.

9. **Limitation of Liability**

- a. Nothing in this Agreement limits **365 Digital Media's** liability for death or personal injury resulting from **365 Digital Media's** negligence.
- b. If any Placement is run incorrectly or not in accordance with the relevant IO, then **365 Digital Media's** entire liability and Advertiser's entire remedy shall be for **365 Digital Media** to arrange for the relevant Advertising to be re-run substantially in accordance with that IO (save for any timing requirements contained in it) – see further Clause 3 c. of these Ts & Cs.
- c. Except for liability arising or dealt with under sub-Clause a. or b. above, **365 Digital Media's** aggregate liability arising under or in connection with this Agreement (whether such liability arises from negligence, breach of contract or howsoever) in respect of any Agreement shall not exceed the greater of: (i) the total amounts payable by Advertiser under the relevant IO; and (ii) £15,000; provided that in no event will **365 Digital Media** be liable to Advertiser or any other person for or in respect of any indirect or consequential loss or damage, or for any loss of data, profit, revenue, contracts or business, howsoever caused (whether arising out of any breach of this Agreement, any negligence of **365 Digital Media** or any other person or otherwise), even if the same was foreseeable by, or the possibility thereof is or has been brought to the attention of, **365 Digital Media**.

10. **Termination**

- a. **365 Digital Media** may immediately terminate any IO upon notice to Advertiser in the event of default by Advertiser in the payment of any invoice or any other breach of the terms of an Agreement. In such event, all Net Charges under any then-outstanding IO shall thereupon become immediately due and payable and **365 Digital Media** shall be entitled to invoice the Advertiser for such charges and for the remainder of any Campaign under the terminated IO as if the Completion Criteria for it had been entirely met.

- b. Termination of these Ts & Cs shall not release Advertiser from its obligation to make payment for all Advertising that has been displayed, or for other charges that have been incurred prior to the date such termination becomes effective.
  - c. Advertiser may terminate an IO immediately on written notice to **365 Digital Media** in the event that **365 Digital Media** is in material breach of these Ts & Cs, and such breach remains unremedied within thirty days after written notice given by Advertiser specifying the breach and requiring its remedy.
  - d. Additionally, the Advertiser may terminate an IO by two full working days' notice to **365 Digital Media**, provided that in such event **365 Digital Media** shall be entitled at any time thereafter to invoice the Advertiser for the entirety of each Campaign under the terminated IO as if the Completion Criteria for it had been entirely met.
  - e. Any termination of under this Clause shall be without prejudice to any rights accrued in favour of either party in respect of any breach committed prior to the date of (or giving rise to) such termination and to those provisions of the Agreement which are by their construction intended to survive such termination.
11. **Notices**  
All notices and other communications to be given under these Ts & Cs shall be given by email, in accordance with any signed **365 Digital Media** Framework Agreement entered into between the parties which includes (amongst other things) arrangements for the use of email in connection with these Ts & Cs ("Framework Agreement"). **365 Digital Media** will be entitled to issue its invoices by email, where a Framework Agreement is in place with the Advertiser.
12. **Entire Agreement**  
Each Agreement, together with any Framework Agreement between the parties, contains the entire agreement and understanding between the parties with respect to the subject matter thereof, and (in relation to such subject matter) supersedes all prior discussions, understandings and agreements between the parties and their agents (or any of them) and all prior representations and expressions of opinion by either party (or its agents) to the other party (or its agents), save that neither party shall limit or exclude or be deemed to limit or exclude any fraud or fraudulent representation by that party (or its agents) to the other party (or its agents) by this Clause.
13. **Various**
- a. If any provision of the Agreement is or becomes invalid or illegal in any respect such provision shall be deemed to be severed from the Agreement but the validity, legality and enforceability of the remaining provisions of the Agreement shall not be affected or impaired thereby.
  - b. A failure by either party to exercise and any delay forbearance or indulgence by either party in exercising any right, power or remedy under the Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time.
  - c. **365 Digital Media** shall be entitled to sub-contract the performance of any of its obligations under the Agreement, and (provided it notifies Advertiser thereof) to assign all or any of its rights and obligations under this Agreement.
  - d. Advertiser shall not assign or otherwise transfer any of its rights and obligations under the Agreement to any other person without the prior written consent of **365 Digital Media**.
  - e. The Clause headings in the Agreement are included for convenience only and shall not affect the construction of the Agreement.
  - f. Nothing in an IO shall prevail over any these Ts & Cs unless it is expressly stated to do so in the IO.
  - g. In these Ts and Cs, "subsidiary company" is defined in accordance with the Companies Act 1985, ss.736, 736A and 736B.
  - h. Words and phrases accorded a particular meaning in any Clause shall (unless the context otherwise requires) be accorded that meaning when they appear elsewhere in the Agreement.
  - i. Neither party shall be liable for any breach of the Agreement that results from matters beyond such party's reasonable control, provided that both parties shall work together to ameliorate the effects thereof.
14. **Governing Law**
- a. The Agreement shall be governed by English law.
  - b. All disputes arising out of or in connection with the Agreement shall be subject to the non-exclusive jurisdiction of the Courts of England.