

Standard Terms and Conditions

Version 1.3

Working Together.

We aim to be open and transparent in the way we do business with our clients and have pulled together everything governing our working relationship. These Terms and Conditions, and any special terms referred to on the Order Form, apply to the services we provide. All other or preceding oral or written statements, understandings or arrangements relating to the subject matter of this Agreement are replaced and superseded by these terms. We've set out all the legal stuff in black and white, and we've done our best to be fair and clear. If in doubt, please ask.

1. Application and entire agreement

- 1.1. These Terms and Conditions apply to the provision of Services by Cute Media Corporation Limited, a company registered in England and Wales under number 06510481 whose registered office is at Craven House, 16 Northumberland Avenue, London WC2N 5AP (**we or us or Service Provider**) to the person buying the services (**you or client**). (each a "**Party**" and together, the "**Parties**").
- 1.2. You are deemed to have accepted these Terms and Conditions when you accept our Proposal or from the date of any performance of the Services (whichever happens earlier) and these Terms and Conditions and our Proposal (the Service Provider Agreement) are the entire Agreement between us.
- 1.3. You acknowledge that you have not relied on any statement, promise or representation made or given on our behalf. These conditions apply to the Service Provider Agreement To the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.4. The **Agreement** between you and us is made up of:
 - 1.4.1. these Standard Terms and Conditions;
 - 1.4.2. the Order Form;
 - 1.4.3. the Service Description Schedule;
 - 1.4.4. the Charges Schedule;
 - 1.4.5. the Data Processing Agreement;
 - 1.4.6. the Special Terms, if any;
 - 1.4.7. any services agreed in writing additional to those specified in the Order Form
- 1.5. The **Service** will start on:
 - 1.5.1. the date you use the **Service**; or

- 1.5.2. the date from which we perform the **Service**; or
- 1.5.3. the Commencement Date provided in the Order Form; whichever is earlier.

2. Definitions and interpretation

- 2.1. In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
 - "**Agreement**" means, collectively, the documents itemised in clause 1.4, as amended or supplemented at the relevant time; (otherwise referred to as the Service Provider Agreement.)
 - "**Business Day**" means any day other than Saturday or Sunday that is not a bank or public holiday in England;
 - "**Business Hour**" means any time between 09:00 and 17:00 on a Business Day, during which the Service Provider is open for business;
 - "**Charges**" means the sums payable by the Client to the Service Provider for the Services delivered under the Agreement as detailed in the Charges Schedule;
 - "**Clause**", "**Sub-Clause**" or "**Paragraph**" is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.
 - "**Client Data**" means any data belonging to the Client or to third parties and used by the Client under licence which is created or managed using the Service Provider's IT Infrastructure, but excludes anonymous, aggregated, statistical or other data not identified against individual Customers;
 - "**Client Systems**" means the Client's computer hardware, firmware, software and

communications infrastructure, telephony and IVR systems through and on which the Services may be delivered;

“Commencement Date” means the Commencement date specified in the Order Form;

“Confidential Information” means all written, electronic or oral information relating to the business or assets of each party and its customers, clients and suppliers; the terms, subject matter or existence of the Agreement;

“Customer” means a customer of the Client;

“Customer Call” means a telephone call handled by the Service Provider, and/or within the Service Provider’s Systems, in relation to delivery of the Services;

“Customer Email” means an email handled by the Service Provider, and/or within the Service Provider’s Systems, in the course of the provision of the Services;

“Customer Care Telephone Line” means a telephone number published by the Client for use by Customers of its Products;

“Customer Refund Account” means a bank account held by the Service Provider for the purpose of holding Client funds intended for refunding Customers;

“Escalated Call” means a Customer Call that requires the input of a manager or supervisor and/or the compilation of additional documents or material to resolve;

“Escalated Email” means an email that requires the input of a manager or supervisor and/or the compilation of additional documents or material to resolve;

“Inbound Call” means a Customer Call received in the course of the provision of the Services;

“Intellectual Property Rights” [“IPR”] means all vested contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents or know-how;

“Network Operator” means any mobile phone network operator;

“Operative(s)” means employees, agents, contractors or subcontractors of the Service Provider assigned to render the Services to the Client;

“Outbound Call” means a Customer Call initiated in the course of the provision of the Services;

“Policies & Procedures” means the documentation provided by the Client in order to facilitate Training;

“Product” means any service operated by the Client for which the Service Provider provides Services under the Agreement;

“Proposal” means the commercial offer made in writing by an authorised representative of the Service Provider to provide Services for the fees and charges set out. A written Proposal may be issued as its own document, within another communication, or as part of the Order Form. Proposals must be accepted in writing within 30 days to remain valid.

“Retainer” means the non-refundable sum payable in advance by the Client monthly for each Service Period to access the Services and against which charges for Customer Call handling and Customer Email handling and other charges may be off-set;

“Schedule” means a schedule to the Agreement

“Service Period” means one calendar month;

“Service Provider Agreement” has the same meaning as the Agreement

“Service Provider Systems” means the Service Provider’s computer hardware, firmware, software and communications infrastructure, telephony and IVR systems through and on which the Services may be delivered;

“Services” means the services described in the Order Form;

“Set Up Charge” means the sum payable by the Client to the Service Provider for Services set up specifically for the Client, as set out in the Charges Schedule of this Agreement;

“Standard Refund” means a refund processed to a UK Customer through an SMS message and redeemable by the Customer through the UK Post Office network;

“Telephony Services” means any telephony services including fixed landline, mobile, VOIP or internet telephony over which the Service is delivered;

“Term” means each period of 12 calendar months when the Agreement is in force, the first Term starting on the Commencement Date and ending on the first anniversary of the Commencement Date;

“Training” means the materials, policy and procedure documentation provided by the Client and upon which the Service Provider bases

delivery of the Services including handling of Customer Calls and Customer Emails

- 2.2. Unless the context otherwise requires, each reference in the Agreement to:
 - 2.2.1. "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 2.2.2. 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;
- 2.3. The headings used in the Agreement are for convenience only and shall have no effect upon the interpretation of the Agreement.
- 2.4. Words imparting the singular number shall include the plural and vice versa.
- 2.5. References to any gender shall include the other gender.

3. Services

- 3.1. The Service Provider shall, for the duration of the Agreement and in accordance with the Terms and Conditions set out herein provide the Services to the Client, as set out in the Order Form.
- 3.2. The Service Provider shall train its Operatives to perform the Services according to Training, Policies and Procedures agreed with the Client.
- 3.3. The Operatives will follow such Training and use reasonable endeavours to resolve each Customer Call and Customer Email effectively and efficiently.
- 3.4. At the end of each calendar month the Service Provider shall provide an activity report and detailed invoice to the Client for the accrued charges according to the Charges Schedule, and according to agreements reached under Clause 3.5. Any Retainer amount paid by the Client to the Service Provider relating to the same Service Period shall be set against accrued Charges in that period so as to reduce the net Charges by up to and including the full amount of the Retainer.
- 3.5. The Service Provider may provide additional services by written agreement and subject to additional charges, as agreed between the Parties.

4. Charges and payment

- 4.1. The Charges payable for the Service are specified in the Charges Schedule, and any other Schedule that may be appended to the Agreement from time to time with the written agreement of the Parties.
- 4.2. The Client shall pay all Charges due to the Service Provider within 14 days of receipt of an invoice from the Service Provider which will be provided after the end of each Service Period or, in the case of the Retainer, at the start of each service period.
- 4.3. Where credit facilities have not been granted, the Client must maintain a credit balance with the Service Provider at a level not less than the projected total level of charges and refunds for the following period.
- 4.4. Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 4.5. In the event that the Client does not pay all Charges due within the time period specified in sub-Clauses 4.2 and 4.3 above, after notifying the Client in writing the Service Provider shall have the right to off-set unpaid Charges against any amount held on behalf of the Client by the Service Provider for whatever purpose and/or to suspend the Client's use of the Service by whatever means it deems appropriate.
- 4.6. In the event that the Client fails to pay under sub-Clauses 4.2, 4.3 and 4.4 then, without prejudice to sub-Clause 4.4, that amount shall bear interest from the due date until payment is made in full, both before and after any judgment, at the rate for the time being applicable under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.7. Additional services commissioned outside those specified and quantified in the Agreement, or otherwise agreed in writing, will be provided at the rates detailed in the Charges Schedule to the Agreement.
- 4.8. The Service Provider reserves the right to vary the Charges from time to time where its costs increase relevant to meeting its obligations under the Agreement or for other reasons. The Client shall receive no less than 30 day's written notice of such variation, which shall take effect upon expiry of such notice.

5. Subcontracting and assignment

- 5.1. Subject to sub-Clause 5.2, the Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 5.2. The Service Provider shall be entitled to perform any of the Services or meet any obligations under the Agreement through any other member of its group or through suitably qualified sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Service Provider.

6. Term and Termination

- 6.1. The Agreement shall commence on the Commencement Date and shall continue for the Term unless and until either party terminates the Agreement on no less than thirty (30) days written notice. Thereafter the Agreement shall automatically renew for additional Terms of 12 months, unless and until either party terminates the Agreement on no less than thirty (30) days written notice.
- 6.2. Notwithstanding the provision of Clause 6.1 above, either Party may terminate the Agreement immediately upon written notice to the other party if the other Party materially breaches the Agreement and fails to correct the breach within thirty (30) days following written notice from the other Party specifying the breach and requiring the breach to be remedied.
- 6.3. The Client reserves the right to terminate the Agreement with immediate effect in the following circumstances:
 - 6.3.1. If the Service Provider becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;
 - 6.3.2. If the Service Provider is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986;
 - 6.3.3. If the Service Provider has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its

undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order; or

- 6.4. The Service Provider reserves the right to terminate the Agreement with immediate effect or to suspend the Service, or any part of the Service, in the following circumstances:
 - 6.4.1. If the Client fails to pay Charges due under the Agreement;
 - 6.4.2. If the Client becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;
 - 6.4.3. If the Client is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986;
 - 6.4.4. If the Client has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order; or
 - 6.4.5. If the Client, Product or affiliates thereof, is, or could reasonably be expected to be, subject to sanction, reprimand, fine or investigation for regulatory or other legal irregularities.
 - 6.4.6. If changes to any regulations or conditions of use prevent the Service Provider from delivering the Services in the manner envisaged under the Agreement.

7. Intellectual Property

- 7.1. The Intellectual Property Rights of the Client including any original IPR insofar as it may exist in the concept of the Product as a sum of its constituent parts of interactivity and the service offered to users shall remain the property of the Client.
- 7.2. The Intellectual Property Rights of the Service Provider including that subsisting in its IT Infrastructure, the design, functionality, layout and features included as part of the Services, including any supporting software and documentation and manner in which all such material is compiled and presented remain the property of the Service Provider.

7.3. Neither party shall, either during the term or after the expiry of the Agreement, permit or cause to occur any infringement of any Intellectual Property Rights of the other Party covered by this Clause.

8. Client Data

- 8.1. Subject to sub-Clause 8.2 the Client Data are and shall remain the property of the Client.
- 8.2. Certain Client Data may belong to third parties. In such cases, the Client warrants that all such Client Data is used with the consent of relevant third parties

9. Confidentiality

- 9.1. During the Term of the Agreement and after termination or expiration of the Agreement without limit in time, the following obligations shall apply to the Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”).
- 9.2. Subject to sub-Clause 9.3 and 9.4, the Receiving Party:
 - 9.2.1. may not use any Confidential Information for any purpose other than the performance of their obligations under the Agreement;
 - 9.2.2. may not disclose any Confidential Information to any third party except with the prior written consent of the Disclosing Party; and
 - 9.2.3. shall make every effort to prevent the unauthorised use or disclosure of the Confidential Information.
- 9.3. The obligations of confidence referred to in this Clause 9 shall not apply to any Confidential Information that:
 - 9.3.1. is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain prior to its receipt by the Receiving Party;
 - 9.3.2. is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;
 - 9.3.3. is required to be disclosed by any applicable law or regulation.
- 9.4. Either Party may:
 - 9.4.1. disclose any Confidential Information to:
 - 9.4.2. any sub-contractor or supplier of that Party;

- 9.4.3. any governmental or other authority or regulatory body; or
- 9.4.4. any employee or officer of that Party or of any of the aforementioned persons;

to such extent only as is necessary for the purposes contemplated by the Agreement, or as required by law, and in each case subject to that Party first informing the person in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in sub-Clause 9.3.3 above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.

10. Liability and indemnity

- 10.1. The Service Provider warrants to the Client, to the best of its knowledge and belief (having made reasonable enquiry of those likely to have relevant knowledge, but not having made any search of any public register) any advice or information given by the Service Provider, or the content or use of any materials, works or information provided by the Service Provider in connection with the Agreement, will not constitute or result in any infringement of third-party rights.
- 10.2. Subject to Clauses 10.5 and 10.7 of these Terms and Conditions, the Parties shall not be liable to each other for any indirect, special or consequential losses or damage they may suffer even if such loss or damage is reasonably foreseeable or if they have been advised of the possibility of incurring it.
- 10.3. Subject to Clauses 10.5, 10.7 of these Terms and Conditions and the timely payment of due and proper Charges by the Client, under the Agreement, the Service Provider’s entire liability to the Client in respect of any breach of its contractual obligations, shall be limited to the level of Charges paid by the Client to the Service Provider during the previous three (3) calendar months.
- 10.4. If a number of claims give rise to what is essentially the same loss, they will be considered together as only one claim under the Agreement

- 10.5. The Client warrants to the Service Provider that the Product is at all times operated in accordance and compliance with all relevant laws, regulations and guidelines that may be applicable, including, but not exclusively, those imposed by The Consumer Rights Act, The Data Protection Act 2018 (UK), General Data Protection Regulation (EU), the Advertising Standards Authority, the Network Operators, Ofcom, ComReg and Phone-paid Services Authority (formerly PhonepayPlus). The Client fully indemnifies the Service Provider against all direct and indirect costs, expenses, liabilities, losses, damages, fines and judgments that may be incurred as a result of any compliance irregularities.
- 10.6. Nothing in the Agreement, as far as regulators, mobile networks, consumer regulation and advertising standards authorities, shall place the Service Provider in the value chain in respect of the Product being supported by the Services.
- 10.7. Notwithstanding any other provision in the Agreement, the Parties liability to each other for fraud, death or injury resulting from either Party's own negligence or that of their employees, agents or sub-contractors shall not be limited.
- 10.8. The Client agrees that the limits of liability under the Agreement are reasonable.
- 10.9. This Clause 10 will stay in force after the Agreement ends for any reason.

11. Data Protection

- 11.1. The Parties shall:
- 11.1.1. take all appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss, destruction or damage to the data and
 - 11.1.2. comply fully with the Data Protection Agreement referred to at Clause 1.4.5 and entered into as part of the Agreement.

12. Force Majeure

- 12.1. Neither the Service Provider nor the Client shall be liable for breaching the Agreement where that breach results from Force Majeure.
- 12.2. Force Majeure refers to an unexpected event that is beyond the reasonable control of the party occurring without its fault or negligence

and includes, but is not limited to: major power failure, major internet and/or hosting service provider failure, industrial action, civil unrest, theft, 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.

- 12.3. If performance of the Agreement is prevented for a continuous period of sixty (60) days, or for multiple periods which total more than sixty (60) days, by Force Majeure, either party may, after notice to the other, terminate the Agreement.

13. Notices

- 13.1. All notices under the Agreement shall be in writing.
- 13.2. Notices shall be deemed to have been duly given:
- 13.2.1. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 13.2.2. when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
 - 13.2.3. on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 13.2.4. on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 13.3. In each case notices should be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

14. Effects of termination

- 14.1. Upon the termination of the Agreement for any reason:
- 14.1.1. any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
 - 14.1.2. 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;
 - 14.1.3. 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 which existed at or before the date of termination;
- 14.1.4. subject as provided in Clause 14 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 14.1.5. each Party shall (except to the extent referred to in Clause 9 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

15. Relationship of Parties

- 15.1. Nothing in the Agreement shall create, or be deemed to create, a partnership, the relationship of principal and agent, or of employer and employee between the Service Provider and the Client.

16. Non-solicitation

- 16.1. Neither Party shall, for the Term of the Agreement and for a period of 12 months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement without the express written consent of that Party.
- 16.2. Neither Party shall, for the Term of the Agreement and for a period of 12 months after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

17. No waiver

- 17.1. The Parties agree that no failure by either Party to enforce the performance of any provision in the Agreement shall constitute a waiver of the right to subsequently enforce that provision or any other provision of the Agreement. Such failure shall not be deemed to be a waiver of

any preceding or subsequent breach and shall not constitute a continuing waiver.

18. Severance

- 18.1. The Parties agree that, in the event that one or more of the provisions of the Agreement is found to be unlawful, invalid or otherwise unenforceable, that those provisions shall be deemed severed from the remainder of the Agreement. The remainder of the Agreement shall be valid and enforceable.

19. Dispute Resolution (Arbitration)

- 19.1. It is agreed that where any dispute or difference relating to the Agreement arises between the Parties that matter shall be referred to the arbitration of a single arbitrator with appropriate qualifications and practical experience to resolve the particular dispute.
- 19.2. The arbitrator shall be agreed by the Parties or in the event of failure to agree shall be appointed by the President for the time being of the Law Society of England and Wales.
- 19.3. The arbitration shall take place in London, England and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of that Act for the time being in force.
- 19.4. The Parties shall promptly furnish to the arbitrator all information reasonably requested by him relating to the particular dispute, imposing appropriate obligations of confidence.
- 19.5. The Parties shall require the arbitrator to use all reasonable endeavours to render his decision within thirty (30) days following his receipt of the information requested or if this is not possible as soon thereafter as may reasonably be practicable. The Parties shall cooperate fully with the arbitrator to achieve this objective.
- 19.6. The Parties shall share the reasonable fees and expenses of the arbitrator equally. The decision of the arbitrator shall be final and binding upon both Parties.

20. Anti-Bribery

- 20.1. Each party shall:
- 20.1.1. comply with all Applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited

- to the Bribery Act 2010 ('Relevant Requirements');
- 20.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 20.1.3. have and shall maintain in place throughout the term of the agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, relevant policies and will enforce them where appropriate;
- 20.1.4. promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of the agreement; and
- 20.1.5. immediately notify the other party (in writing) if a foreign public official becomes an officer or employee or acquires a direct or indirect interest in it (each party warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the agreement).
- 20.1.6. Each party shall ensure that any person associated with it who is performing services or providing goods in connection with the Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on it in this clause 19 (Anti-Bribery). The party shall be responsible for the observance and performance by such persons of such terms, and shall be directly liable to the other party for any breach by such persons of any of the relevant terms.
- 20.1.7. Breach of this clause shall be deemed a material breach.

21. Counterparts

- 21.1. The Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

22. Law and jurisdiction

- 22.1. The Agreement shall be governed by the laws of England and Wales.