

Terms and Conditions

1. Definitions

The following words and expressions shall have the following meanings:

“Agreement” means this Agreement including the Order, these Terms and Conditions and any schedules or annexures to them.

“Client Materials” means the data and all text, images, content, trademarks, product names, logos and any other materials which the Client supplies to iConvert for use in the performance of the Services.

“Communication(s)” any contact made or generated by iConvert with a Visitor of the Website pursuant to this Agreement.

“Confidential Information” means non-public information that either Party designates as confidential or which under the circumstances surrounding disclosure, reasonably ought to be treated as confidential, including without limitation the terms of this Agreement, a Party's finances and business affairs, all confidential, commercial, financial, marketing, business and technical information, data (including all data relating to customers and prospective customers), products, strategic development and marketing plans, trade secrets, know-how, personnel and suppliers of the disclosing Party together with all information directly derived from the foregoing;

“Content” means information, data, text, software, music, sound, photographs, graphics; video; messages or other materials, contained within a Communication, excluding any Client Materials.

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “processing” and “appropriate technical and organisational measures” shall have the meanings given in the Data Protection Legislation.

“Data Protection Legislation” means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);

“Effective Date” means the date on which this Agreement is signed by both parties.

“Fees” means the fees payable from the Client to iConvert in respect of the Services as further set out in this Agreement.

‘Intellectual Property Rights’ means all intellectual property rights and interests including, without limitation, any and all patents, trademarks, service marks, trade and business names (including all goodwill associated with such name), moral rights, database rights, rights in designs, copyright (including rights in computer software) and similar current and future rights throughout the world (and including all renewals and extensions) for the full term of such rights, whether or not they are registered or capable of being registered;

“Laws” means all laws, legislation and regulations (as they may be amended from time to time) of England and Wales, relating to the provision and receipt of the Services including but not limited the Data Protection Legislation;

“Live Date” means the date on which iConvert first engage with live traffic on the Website.

“Party” means iConvert or the Client;

“PECR” means the Privacy and Electronic Communications Directive (2002/58/EC) Regulations 2003 as the same may be amended or replaced from time to time, to the extent the same applies to the Parties and/or the Services;

‘Platform’ means the iConvert suite of software applications;

‘iConvert’ means iConvert Limited; registered in England and Wales at 16-26 Albert Road, Middlesbrough, Cleveland, United Kingdom, TS1 1QA under company number 11852004.

‘Services’ means the services to be provided under this Agreement as further set out in the Order;

“Term” means the period during which this Agreement is in force as provided in Clause 11;

“UK Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK as the same may be amended, updated or replaced including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018 and PECR;

“Visitor” means a visitor to the Website;

“Website” means the Client's transactional website(s) in relation to which the Services are provided;

“Order” means the service order form signed by both parties attached to these Terms and Conditions;

2. Interpretations

2.1 All references to Clauses and Sub-Clauses are to Clauses and Sub-Clauses in this Agreement.

2.2 In the event of any inconsistency between the Order, these Terms and Conditions and the terms contained in any Schedule or Annexure to this Agreement, these Terms and Conditions shall take precedence except where the provisions of the relevant Order, Schedule or Annexure explicitly state otherwise and in the case of any inconsistency between the Order and the terms contained in any Schedule or Annexure to this Agreement, the provisions of the Order shall take precedence.

2.3 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, phrase or term preceding those terms.

3. Scope of Agreement

3.1 In consideration of payment of the Fees by the Client, and subject to the terms and conditions of this Agreement, iConvert will provide to the Client during the Term the Services outlined in this Agreement.

3.2 The addition of new Services shall be achieved by executing a new Order, signed by both parties

3.3 In order to utilise the Services, the Client must procure access to the internet either directly or through devices that access web based content. The Client must provide all equipment necessary to make such a connection to the internet, including the use of a relevant web browser.

3.4 The Client shall be responsible for the security of all its and its customers' passwords. The Client agrees that all Platform activity other than Communication initiated by iConvert as part of the Services, is deemed to have been performed by the Client and is not the responsibility of iConvert.

4. Payment

4.1 On or after the Effective Date iConvert shall deliver to the Client an invoice for the initial fees forming part of the Fees as set out on the Order.

4.2 At the start of each calendar month during the term, iConvert will deliver to the Client an invoice for the monthly fees forming part of the Fees as set out in the Order for the current month (and in the case of the first such month, any Fees due in respect of that part of the month preceding the month which have not already been invoiced). At the request of the Client, iConvert will issue a report supporting and explaining the calculation of the invoice. Unless the Client notifies iConvert in writing within five (5) days following receipt of an invoice that it disputes an invoiced amount, the Client shall be deemed to have accepted the invoice.

4.3 All Fees and any other charges, costs and expenses owed by the Client to iConvert under this Agreement are due for payment by the Client within fifteen (15) days following the date of iConvert's invoice.

- 4.4 Without limiting any other right or remedy of iConvert under this Agreement, if the Client fails to make any payment due to iConvert under this Agreement, iConvert shall have the right to:
- 4.4.1 charge interest on the overdue amount accruing on a daily basis at the rate of two percent (2%) per annum above the then current base rate of HSBC Bank Plc. from the due date for payment until payment is received in full, which shall be payable by the Client on demand along with all reasonable fees and costs incurred by iConvert in recovery of overdue sums); and
- 4.4.2. suspend forthwith and without notice the Client's access to the Services until the relevant Fees invoice is settled in full. Any such suspension shall not affect the length of the Term of this Agreement.
- 4.5 Where any taxable supply for the purposes of VAT or any equivalent tax is made under this Agreement by iConvert to the Client, the Client shall, on receipt of a valid VAT (or equivalent tax) invoice from iConvert, pay iConvert such additional amounts in respect of VAT (or equivalent tax) as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5. Intellectual Property Rights

- 5.1 Subject to payment of the Fees iConvert hereby grants the Client a limited, non-transferrable, non-sub-licensable, non-exclusive, right and licence during the Term to use the Platform and the Content in connection with this Agreement.
- 5.2 The Client acknowledges and agrees that all the Intellectual Property Rights in the iConvert brand, the Services, the Platform and the Content including without limitation all communication media and systems associated with it, belong to, vest in and remain the absolute property of iConvert. The Client does not as a result of making use of these under this Agreement obtain any rights in respect of them or any iConvert infrastructure or software associated with the Services.

6. Approvals and Authority

- 6.1 Any reference in this Agreement to the Client's Approval shall mean written approval signified by email and sent by an authorised person at the Client to an authorised person at iConvert.
- 6.2 iConvert shall obtain the Client's Approval to all Communications before they are sent to Visitors.
- 6.3 The Client shall be solely responsible for obtaining and maintaining all and any regulatory approvals, licences or permissions it is required to hold in order to conduct its business and carry on its activities and shall ensure that the goods and/or services it provides and the business it operates comply with all applicable laws, regulations and codes of practice and it shall operate its business in an ethical manner with all due regard to the health and safety of its customers and employees.

7. Confidentiality

- 7.1 Each Party shall hold in confidence all Confidential Information obtained from the other pursuant to this Agreement.
- 7.2 Neither Party shall disclose to any third party without the express written permission of the other Party any Confidential Information obtained from the other Party.
- 7.3 The provisions of sub clauses 7.1 and 7.2 shall not apply to any information which:
- 7.3.1 is or becomes public knowledge other than by breach of this clause 7;
- 7.3.2 is in the possession of the receiving Party without restriction following disclosure before the date of receipt from the disclosing Party;
- 7.3.3 is received by the receiving Party from a third party who lawfully acquired or developed it and who is under no obligation restricting its disclosure; or
- 7.3.4 must be law be disclosed by the receiving Party so long as the receiving Party provides the disclosing Party with prompt notice, to the extent allowed by the applicable law, and complies with any protective order imposed on such disclosure.
- 7.4 At the request of the disclosing Party, the receiving Party will on termination of this Agreement return or (to the extent possible) securely destroy all of the other Party's Confidential

Information that is reduced to writing, drawing(s), schematic(s) or any other form of documentation, whether held in hard copy or machine-readable form or destroy or delete all such material and to certify the destruction to the disclosing Party.

- 7.5 If the Parties have separately agreed to an applicable non-disclosure agreement, that agreement shall take precedence, but solely to the extent of the conflict.
- 7.6 For the avoidance of doubt, this clause 7 shall survive termination or expiry of this Agreement.

8. Limit of Liability

- 8.1 Nothing in this Agreement shall operate to exclude or limit the liability of either Party for (i) death or personal injury resulting from the negligence or default of such Party or its directors, officers, employees, contractors or agents (ii) fraud and/or fraudulent misrepresentation or (iii) anything else for which a Party cannot by law limit or exclude its liability.
- 8.2 Subject to sub clause 8.1, in no event shall iConvert be liable to the Client for (i) loss of profits, (ii) loss of business opportunity (iii) loss of goodwill (iv) loss of anticipated savings or (v) any incidental, indirect, special, consequential, punitive, or exemplary damages under any circumstances, whether arising in contract, tort, negligence, misrepresentation, for breach of duty, restitution or otherwise even if the Party has been advised of, knew, or should have known of the possibility thereof
- 8.3 Subject to sub clause 8.1, in no event shall iConvert's liability to the Client exceed one hundred per cent (100%) of the total charges in the contract year in which the breaches occurred howsoever such liability may arise under or in connection with this Agreement including but not limited to liability in contract, tort, negligence, misrepresentation, for breach of duty, restitution or otherwise..

9. Privacy and Compliance

- 9.1 The parties agree that they will at all times comply with the provisions and obligations imposed by Law. This clause 9 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation
- 9.2 The Client and iConvert acknowledge that it is the Client's responsibility to ensure and the Client hereby represents and warrants that the instructions the Client gives to iConvert regarding the processing of any personal data shall be consistent with Law, this shall include but shall not be limited to ensuring that the correct privacy notices and cookies notices are brought to data subjects' attention at the appropriate time and that appropriate consent (if required under law) is obtained from the data subject regarding all processing and communications to be carried out by iConvert and falling within the Data Protection Legislation.
- 9.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and iConvert is the Processor. The Parties agree that iConvert shall process the Personal Data of the Client's Visitors and customers for the purposes of performing the agreed Services. The purpose of that processing being to carry out certain Website user analysis and the delivery of Communications to the Client's Visitors and customers as well as certain ancillary purposes such as identifying risks of non-compliance with other Laws as the same are applicable in respect of the Client's Visitors and customer activities in using the Client Website. The duration of such processing will generally be for the length of the Visitor's registration as a customer of the Client but certain processing may occur even without registration and continue beyond duration of the Visitors registration where justified for administration of unsubscribe preferences or to assist in identification of problem Visitors. The categories of data subjects shall be restricted to those individuals accessing the Client's Websites and services agreed to fall within the terms of this Agreement. The types of personal data to be processed shall be the email addresses, IP addresses, unique device identifiers and Website user information and interactions relating to the Client's Visitors, customers and prospective customers on the Websites falling within the agreed scope of the Services.
- 9.4 Without prejudice to the generality of sub clauses 9.1 and 9.2, the Client will ensure and hereby warrants and represents that it has all necessary and appropriate consents and notices in

- place to enable (as dictated by the Services) lawful transfer of the Personal Data to iConvert and lawful collection of the Personal Data by iConvert on behalf of the Client for the duration and purposes of this Agreement, including for the service of adverts and marketing materials (Communications) via or utilising cookies and other electronic means (as the same is defined in the Data Protection Legislation).
- 9.5 Without prejudice to the generality of sub clause 9.1, iConvert shall, in relation to any Personal Data processed on behalf of the Client in connection with the performance by iConvert of its obligations under this Agreement:
- a) process that Personal Data only on the documented written instructions of the Client (and the end customer's/Visitor's preferences) unless iConvert is required by applicable Law to otherwise process that Personal Data. Where the Provider is relying on Law as the basis for processing Personal Data, iConvert shall promptly notify the Client of this before performing the processing required by Law unless such Law prohibits iConvert from so notifying the Client;
 - b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - d) neither Party shall transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - i. the Client or iConvert has provided appropriate safeguards in relation to the transfer;
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. iConvert and the Client each complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. iConvert complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
 - e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
 - g) at the written direction of the Client or as otherwise agreed between the Parties, delete or return Personal Data and copies thereof to the Client on termination of this Agreement or, (if earlier) at the appropriate time as dictated by the requirements of the Data Protection Legislation and the need to minimise data processing, unless required by applicable Law to store the Personal Data or prohibited by Law from so returning such Personal Data to the Client; and
 - h) maintain complete and accurate records and information to demonstrate its compliance with this clause 9.
- 9.6 The Client consents to iConvert appointing appropriate sub-processors as iConvert may identify from time to time as a third-party processor of Personal Data under this Agreement. iConvert confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business which iConvert reflect the requirements of the Data Protection Legislation. As between the Client and iConvert, iConvert shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 9, unless a sub-processor identified and requested by the Client is appointed, in which case the Client shall be fully liable and iConvert shall have no liability whatsoever for such sub-processors.
- 9.7 Either Party may, at any time on not less than 30 days' notice, revise this clause 9 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 10. Warranties and Indemnities**
- 10.1 iConvert warrants that the Services:
- a) will be performed with reasonable skill and care; and
 - b) be delivered in accordance with the design document agreed in writing between the Parties..
- 10.2 Subject to sub clause 10.1, all information, the Platform and the Content (including third party information, products and content) accessed or provided as part of the Services are provided as is and without guaranteed availability or uptime.
- 10.3 To the fullest extent permitted by law and except as expressly set out in this Agreement, iConvert excludes all other representations, warranties, obligations and liabilities (express, implied or statutory, including but not limited to the conditions of satisfactory quality, fitness for a particular purpose and non-infringement of proprietary rights) as to the Services and all information, the Platform and Content (including third party information products and content) accessed or provided as part of the Services or otherwise under this Agreement.
- 10.4 The Client warrants and represents that all Client's Materials belong or are properly licensed to the Client and that use of the such materials and compliance with the Client's instructions by iConvert shall not infringe any third party Intellectual Property Rights or other rights.
- 10.5 The Client shall indemnify iConvert against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by iConvert arising out of or in connection with:
- a) any breach of any of the warranties contained in sub clauses 9.2, 9.4 (data protection) and 10.4 (non-infringement by Client's Materials);
 - b) any claim made against iConvert for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with use of the Client's Materials or following the Client's instructions in performance of the Services.

- 11. Term and Termination**
- 11.1 This Agreement is deemed to have commenced on the Effective Date and, unless it is terminated earlier in accordance with this Agreement, shall continue in force for the initial period indicated in the Order and thereafter will continue for further consecutive twelve month periods (each a "**Renewal Period**") unless either Party provides at least 30 days' written notice to the other, such notice to expire at the end of such initial period or at the end of a Renewal Period.
- 11.2 If for any reason other than iConvert's breach of this Agreement, the sending of Communications is delayed beyond a period of 30 days after the Effective Date, the Client agrees that:
- 11.2.1 the initial period indicated in the Order will automatically extend to commence on the Live Date; and
- 11.2.2 iConvert can invoice the Client and the Client shall pay reasonable revised initial fees to reflect the impact of the delay, irrespective of previously negotiated reduction on such initial fees as set out in the Order.
- 11.3 Either Party may terminate this Agreement with immediate effect on written notice to the other Party if the other Party:
- 11.3.1 commits a material breach of this Agreement and, if the breach is capable of remedy, the other Party does not remedy the breach within 30 days of receiving written notice to do so specifying the nature of the breach; or
- 11.3.2 convenes a meeting of its creditors, or becomes insolvent, is unable to pay its debts has an administrative receiver (or receiver, or administrator) appointed over its assets or business, is the subject of a petition presented to put it into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or ceases or threatens to cease to carry on business, or anything analogous to any such events befalls the other Party in any other jurisdiction in which that Party operates.
- 11.4 Without prejudice to any other right or remedy it may have, iConvert may at its sole discretion and with immediate effect either suspend the Services or terminate this Agreement on written notice to the Client if the Client fails to pay any amount due to iConvert under this Agreement.
- 11.5 Termination of the Agreement shall not prejudice any rights of either Party which have arisen on or before the date of termination.
- 11.6 Within thirty days following the date of termination iConvert, shall at the option of the Client on written notice, return or destroy the Client Materials subject to iConvert receiving full payment of any Fees or other charges due under this Agreement. The Client may request the return or destruction of any other type of analytical data, and the parties will agree such return on a case-by-case basis on commercial terms then to be agreed.
- 12. General**
- 12.1 Neither Party shall be under any liability to the other in respect of any delay, failure or interruption in performing any term or condition (except obligations to pay money) of this Agreement due to circumstances arising by reason of force majeure, namely, circumstances beyond the control of a Party which shall include (but not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, embargo, riot or civil commotion. Should force majeure occur for a period of more than thirty (30) days, either Party may immediately terminate this Agreement upon written notice to the other Party.
- 12.2 Any notice, consent or other communication in connection with this Agreement shall be in writing and may be delivered in person, by registered or certified, return-receipt requested mail. If hand-delivered or delivered by registered mail or certified mail, the notice shall be effective upon receipt. If by facsimile copy, the notice shall be effective when sent. Notices should be addressed to the Company Secretary of the receiving Party at the address detailed at the beginning of this Agreement.
- 12.3 If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such provision will be deemed modified only to the extent necessary to render that provision valid or excluded from this Agreement, as the situation may require; and this Agreement shall be enforced and construed as if such provision had been included as so modified.
- 12.4 The relationship of the Parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to make either Party (or its agents or employees) the representative or agent of the other Party for any purpose. Any written representation or warranty not expressly contained herein shall not be enforceable by the Client.
- 12.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement or operates to give any third party the right to enforce any term of this Agreement.
- 12.6 The provisions of clauses 7 and 8 and any other provision which is expressed or implied to continue in force shall survive the termination of this Agreement.
- 12.7 This Agreement and any dispute or claim arising out of or in connection with it (including non-contractual claims) shall be governed by and construed in accordance with the laws of England and Wales. The Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in relation to all matters arising out of or in connection with this Agreement (including non-contractual disputes or claims).
- 12.8 No delay, neglect or forbearance on the part of either Party in enforcing against the other Party any term or condition of the Agreement shall either be deemed to be a waiver or in any way prejudice any right of that Party under the Agreement.
- 12.9 This Agreement constitutes the entire agreement and understanding of the Parties relating to its subject matter and supersedes any previous agreement or understanding relating to such subject matter. No terms that the Client seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing shall have any effect and no amendment to this Agreement shall be effective unless made in writing and signed by both parties. The Parties have not relied on and shall have no remedy in respect of any statement, representation, warranty, understanding, undertaking, promise or assurance (whether negligently or innocently made) by any person other than as expressly set out in this Agreement provided that nothing in this Agreement shall limit or exclude any liability for fraud.
- 12.10 iConvert shall only disclose its relationship with the Client with the Client's written permission, such permission not to be unreasonably withheld or delayed.
- 12.11 Neither Party may assign, substitute or transfer any rights or delegate any duties under this Agreement without the other Party's prior written consent, except that either Party may assign or transfer this Agreement in connection with the sale or transfer of all or substantially all of such Party's assets, stock or business by sale, merger, consolidation or similar transaction, provided this does not come within any of the circumstances provided for in sub clause 11.3.2.