

IN&M Internet advertising terms and conditions

1. Definitions

In these Conditions, the following words and expressions shall have the meaning set out below:

“Additional Fee” means a sum of money payable by the Client to IN&M in respect of the number of Ad Impressions in any month of the agreement in excess of the Ad Impressions booked, and calculated in accordance with the agreed fee basis;

“IN&M” means IN&M Internet Media Limited;

“IN&M Site(s)” means the web sites on which the Advertising Creative is booked to appear;

“Advertising Creative” means (a) a branded banner occupying a file of up to 12k and not more than 468 x 60 pixels; or (b) skyscraper format up to 15k and 120x600; or (c) button up to 5k and 120-60; or (d) rich media; or (e) any other form of advertising creative on or relating to various pages of the IN&M Site(s); any of which may include a hyper-text link to the Client Site;

“Ad Impression” means any instance when a page is downloaded to a User where that page includes an Advertising Creative, as measured by or on behalf of IN&M;

“Agreement” means these Conditions and the Booking Form;

“Campaign Period” means the campaign period booked by the Client;

“Client Site” means the web site location(s) to which the Advertising Creative is linked via hyper-text link(s);

“Information” means all the information, Trade Marks, logos and other materials necessary to enable IN&M to create the Advertising Creative or, if the Advertising Creative is supplied by the Client, the Advertising Creative itself;

“Page Traffic Statistics” means the number of Ad Impressions, and the click-through rate in respect of the Advertising Creatives occurring during the previous calendar month;

“Site Owner(s)” means any entity which owns or controls the IN&M Site(s);

“Trade Marks” means all trade marks incorporated in the Information and/or the Advertising Creative; and

“User” means any person who accesses the IN&M Site.

2. Rights and Obligations of IN&M

2.1 IN&M will publish the Advertising Creative on the IN&M site(s) each day during the Campaign Period or, as appropriate, until the Ad Impressions Booked have accrued in respect of the Advertising Creative (subject to the following).

2.2 IN&M will retain full editorial control over all material appearing on the IN&M Site.

2.3 IN&M will make Page Traffic Statistics available to the Client within thirty days of the end of each month during the Campaign Period.

3. Rights and Obligations of the Client.

3.1 The Client agrees to supply to IN&M on or before the agreed copy delivery date (which unless otherwise agreed in writing shall be no later

than 3 working days before the Campaign Period) either: (a) a file containing the Advertising Creative; or (b) (if it is specifically agreed with IN&M that IN&M will create the Advertising Creative) the Information in an agreed format and medium.

3.2 The Client will permit IN&M to link into the Client Site via the Advertising Creative during the Campaign Period.

3.3 The Client will inform IN&M at least twelve working days in advance of any planned changes to the Client Site that might affect the performance of any part of IN&M's obligations under this contract.

4. Acceptance of Advertising Creative

4.1 The Advertising Creative will be published on the IN&M Site(s) in consideration of payment of IN&M's fees and charges.

4.2 IN&M have the right at any time to omit, amend, suspend or change the position of any Advertising Creative accepted. IN&M will consult with the Client in good faith if it decides to exercise such rights.

5. Charges

5.1 The Client shall pay all fees and charges in advance unless a previously approved account has been agreed with IN&M

5.2 If the number of Ad Impressions in any month appears likely to exceed the Ad Impressions Booked, IN&M may notify the Client Contact and seek to agree: (a) whether to reduce the average number of pages of the IN&M Site(s) which will include an Advertising Creative for the remainder of the month so that the number of Ad Impressions does not exceed the Ad Impressions Booked; or (b) whether to permit the Ad Impressions Booked to be exceeded with a pro rata increase in the fees due from the Client in respect of that month.

5.3 If the number of Ad Impressions in any month is less than the Ad Impressions Booked, the deficit will be carried over to the next period and aggregated to the target number of Ad Impressions for that month.

5.4 If at the end of the Campaign there is an aggregate deficit in the number of Ad Impressions compared with the Ad Impressions Booked, IN&M and the Client will meet to agree to a mutually acceptable settlement and, if no other agreement is reached, IN&M will reimburse a portion of its fees to the Client in respect of the deficit pro-rated according to the agreed fee basis.

5.5 All tracking and subsequent reporting will be based upon the DART for Publishers adserving system. IN&M will seek to resolve any discrepancies with the Clients system in good faith but retains the right to use these figures as the basis for all invoicing and payments.

6. Use of Trade Marks

The Client warrants and undertakes that IN&M and the Site Owner(s) will be entitled to use the Client's name and Trade Marks in connection with the Advertising Creative.

7. Warranties

- 7.1 IN&M warrants to the Client that:
- (a) it has the full power and authority to enter into and perform this Agreement.
- 7.2 The Client warrants and undertakes to IN&M:
- (a) it has the full power and authority to enter into and perform this Agreement;
 - (b) nothing contained in the Advertising Creative or the Information shall infringe any right of copyright, right of trade mark, right of privacy, right of publicity or personality or any other right of any other nature of any person, or be obscene, libellous, blasphemous, defamatory or unlawful in any way, or shall incorporate any third party source material;
 - (c) there are and shall be no claims, demands, liens, encumbrances or rights of any kind in any of the Information resulting from any act or omission of the Client, which can or will impair or interfere with the rights of IN&M, and that nothing contained in the Information, nor any use of it, will violate any right of any third party; and
 - (d) it owns all necessary rights in, or has all necessary licences in respect of the Trade Marks.
- 7.3 The placing of an order for the insertion of an Advertising Creative on the IN&M Site(s) shall constitute an undertaking by the Client to IN&M that any site linked into via the Advertising Creative and the Advertising Creative:
- (a) Comply with all relevant consumer protection legislation and advertising codes; and
 - (b) Do not contain material that is obscene, blasphemous, defamatory, infringing of any rights of any third party or otherwise legally actionable under any civil or criminal laws in force in any legal jurisdiction from which the Advertising Creative will be accessible or which might bring IN&M or any Site Owner into disrepute.
 - (c) Comply with the British Code of Advertising, Sales Promotion and Direct Marketing and all advertising guidelines made available from time to time by Site Owner(s) (and for the avoidance of doubt it is the Client's responsibility to make themselves aware of all such guidelines).

8. Indemnities

- 8.1 The Client agrees to indemnify IN&M and the Site Owner(s) and keep each of them indemnified at all times against all claims, proceedings, demands, damages, liabilities and costs arising in connection with or further to the subject of this agreement, including but not limited to damages, payments and legal costs arising out of any use of an Advertising Creative by a User (or any complaint or claim in respect thereof), including without limitation in respect of any transaction between the Client and a User.
- 8.2 IN&M will not be liable for any loss or damage, direct or consequential, occasioned by error in the positioning of or omission to publish any Advertising Creative or for late publication of an Advertising Creative or failure to perform any other obligation whether occasioned by negligence or otherwise save in cases occasioned by the direct negligence of IN&M,

in which case compensation may be negotiated up to a maximum of the cost of the Advertising Creative booked and paid for by the Client.

9. Intellectual Property Rights

- 9.1 The Client warrants and undertakes that it is and shall remain the owner of all intellectual property rights in the Client Site and the Client logos and Trade Marks that may feature within the Advertising Creative.
- 9.2 If any third party claims that the design of the Advertising Creative infringes the intellectual property rights of that third party, IN&M may modify the Advertising Creative or delete or replace any part of the material, or information contained in the Advertising Creative.

10. Confidentiality And Data

- 10.1 Each party agrees to keep confidential (both during and after the Campaign Period) the terms of this Agreement, the Page Traffic Statistics and all other information concerning the business or affairs of the other. This obligation will not apply in the case of any disclosure required by law, trivial information or information which is already publicly available or in the possession of a party at the time of disclosure by the other (other than as a result of a breach of any confidentiality obligation).
- 10.2 Each party will comply with all English data protection legislation.

11. Cancellation

Should a Client postpone or cancel a booked campaign within 28 days before the start of the Campaign Period, they will be charged 100% of the original booking fee as compensation for the reserved inventory, unless otherwise agreed in writing.

11. Termination

- 12.1 Both parties shall have the right to terminate this Agreement upon the giving of written notice in the event of any of the following events:
 - (a) if the other commits any material breach of its obligations under this Agreement which, in the case of a breach capable of remedy, is not remedied within 10 days of service of a notice specifying the breach and requiring it to be remedied;
 - (b) if the other holds any meeting with or proposes to enter into or has proposed to it any arrangement or composition with its creditors (including any voluntary arrangements as described in the Insolvency Act 1986); has a receiver, administrator, or other encumbrance take possession of or appointed over or has any distress, execution or other process levied or enforced (and not discharged within 7 days) upon the whole or substantially all of its assets; ceases or threatens to cease to carry on business or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
 - (c) pursuant to Clause 15.
- 12.2 Forthwith on termination of this Agreement:
 - (a) IN&M will remove the Advertising Creative from the IN&M Site; and

(b) The Client will account to IN&M for all fees and charges payable up to and including the last day of the Campaign Period or date of termination, as applicable.

12.3 Termination of this Agreement shall be without prejudice to any rights of a party accrued before termination.

13. Disputes

Both parties shall use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement or a breach thereof, if any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives of the parties the dispute shall be referred to the signatories of this Agreement or their successors who shall attempt to resolve the dispute. If any such attempt at resolution fails to result in a settlement, the matter at the election of either party may be submitted for resolution to a court of competent jurisdiction, which shall be the courts of England and Wales.

14. Notices

Any notice given under this Agreement will be in writing and may be delivered to the other party or sent by pre-paid post or facsimile transmission to, in the case of postal service, the main business of that party or, in the case of post or fax service, to such other address or number as may be notified under this Agreement by that party from time to time for this purpose.

15. Force Majeure

A party will not be liable for any failure/delay in performing its obligations under this Agreement to the extent that this failure is the result of any cause or circumstance beyond the reasonable control of that party and that failure could not have been prevented or overcome by that party acting reasonably and prudently. If by reason of force majeure a party is unable to perform all or any part of its obligations under this Agreement for a continuous period of 20 working days, the other party may terminate this Agreement immediately by written notice.

16. Assignment

This Agreement is personal to and for the sole benefit of the Client and the Client shall not assign, transfer, sub-license, sub-distribute, mortgage, charge or in any other way dispose of any of its rights, interests or obligations under this Agreement to any person or organisation. IN&M shall be entitled to assign or license the whole or any part of its rights under this Agreement to any IN&M subsidiary and in such event all of the representations, warranties and undertakings on the part of the Client contained in this Agreement shall inure for the benefit of the relevant IN&M subsidiary and, if the said subsidiary undertakes direct with the Client to comply with the obligations of IN&M to the Client (but not otherwise), then from the date of such undertaking, IN&M shall have no further liability to the Client.

17. General

- 17.1 Nothing in this Agreement will be deemed to create a partnership or joint venture between the parties. IN&M acts as a principal at law in all bookings of advertising space.
- 17.2 No failure or delay by any party in exercising its rights under this Agreement will operate as a waiver of that right nor will any single or partial exercise by either party of any right preclude any further exercise of any other right.
- 17.3 The rights and remedies of the parties under this Agreement are cumulative and in addition to any rights and remedies provided by law.
- 17.4 Any variation to this Agreement must be in writing and agreed by the parties.