

CONTENT CALENDR TERMS AND CONDITIONS

TERMS AND CONDITIONS

Version in effect from November 2016.

1 Interpretation

In these Conditions, unless the context otherwise requires:

Additional Service Fees	means the charges for the Additional Services set out on the Order Form or calculated by reference to CCL's then current price list for such services set out in the Client Portal, as may be amended from time to time by CCL;
Additional Services	means the Services other than the Subscription Services, including information services, interactive services and professional services, as set out in the Order Form or as may be agreed from time to time by the Parties (including any Additional Services purchased by Named Users using the Client Portal);
Agreement	means the contract formed by the acceptance of the Order Form (subject to these Conditions) by CCL;
Associate	means, in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that party from time to time;
Business Day	means a day other than Saturday, Sunday and public holidays when clearing banks generally are open for business in London;
CCL	Content Calendr Limited, with registered company number 09247156, whose registered office is at 104 Cavell Street, London E1 2JA;
Client	means the customer identified on an Order Form submitted to CCL by means of the Client Portal or order letter for the provision of the Service by CCL to that customer;
Client Portal	means the Client-specific sections and pages of the Website accessed by Named Users logging in using the Security Devices;
Commencement Date	means the date specified as the commencement date on the Order Form;
Competent Authority	means any person having regulatory or supervisory authority over any part of the business of either party or a Client (as applicable), including any court of competent jurisdiction;
Conditions	means these terms and conditions as amended from time to time by CCL, which shall apply to all Services and Orders and any other agreements for the provision of services by CCL to the Client unless expressly agreed otherwise;
Content	means the information and social media content in any form submitted by the Client to CCL in the course of accessing the Content Calendr;
Content Calendr	means the combination of the Subscription Service, Database, Software, Client Portal and related services made available (according to the Client's chosen Tier of Service) to the Client in consideration of the

Subscription Charge;

Control	means that a person owns directly or indirectly more than 50% of the shares or securities of the other person representing the right to vote on all or substantially all matters including the election of directors and Controls and Controlled shall be interpreted accordingly;
Data Protection Legislation	means the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any legislation implementing the Data Protection Directive 95/46/EC of 24 October 1995 or the Privacy and Electronic Communications Directive 2002/58/EC of 12 July 2002;
Database	means the central database of the Client's content compiled from Content and Data submitted by the Client to CCL;
Documentation	means the Technical Specification and the User Guide and any other documentation provided by CCL to the Client in respect of the Platform and/or the Services;
Fees	means the Subscription Charge and the Additional Service Fees set out on the Order Form, the Client Portal, or otherwise agreed between CCL and the Client, as the same may be adjusted from time to time;
Force Majeure Event	means an event or sequence of events beyond a Party's reasonable control preventing or delaying it from performing its obligations under these Conditions, but inability to pay is not a Force Majeure Event;
Good Industry Practice	means, in relation to any undertaking and any circumstances, the exercise of that degree of care and skill which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;
Initial Period	means the initial period set out on the Order Form;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trade marks, trade names, design right, get-up, database right, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case: <ul style="list-style-type: none">(a) whether registered or not;(b) including any applications to protect or register such rights;(c) including all renewals and extensions of such rights or applications;(d) whether vested, contingent or future;(e) to which the Party licensing those rights or its licensor are or may be entitled; and(f) wherever existing;
Named Users	means those persons who are named as users of the Subscription Service on behalf of the Client and whose details are set out on the Order Form, or persons belonging to a class of potential users identified in the Order Form and subsequently designated as Named Users by the Client as the same may be amended from time to time by prior written agreement of CCL;

Operating Hours	means 9am to 5pm on Business Days;
Operating Year	means a 12-month period from the Commencement Date of the Service or any anniversary of it in which CCL operates the Service;
Order Form	means Client's order for Services in an online order form or order screens on the Client Portal which becomes binding once accepted by CCL and notified to the Client, or an order form or letter prepared by CCL and countersigned by the Client;
Party	means either CCL or the Client and Parties means both CCL and the Client;
Representatives	means the representatives appointed by each party whose details are set out on the Order Form, or their successors as may be notified to the other party;
Sales Tax	means any sales, purchase or turnover tax as may be applicable in any relevant jurisdiction, including, without limitation, value added tax chargeable under or pursuant to legislation implementing the EC Sixth Directive (77/388/EEC);
Security Device	means the Named User and account identification codes or numbers, passwords and test keys and other security devices as may be agreed from time to time between CCL and the Client;
Security Policy	means the security policy set out in the Technical Specification and/or the Client Portal, as may be updated from time to time;
Service	means Subscription Service and the Additional Service set out in the Order Form or as may be agreed between the Parties, as may be supplemented or amended from time to time by CCL;
Service Levels	means the service levels set out on the Website as the same may be amended from time to time by CCL with the prior written approval of the Client, for each tier of service provided by CCL;
Software	means the software developed and owned by CCL and delivered via the Website to create the Content Calendr;
Subscription Charge	means the annual subscription charge for the applicable Tier of Service set out in the Order Form as the same may be varied in accordance with condition 4.11;
Subscription Service	means the subscription access to and use of the Content Calendr, consistent with the Tier of Service specified in the Order Form;
Technical Specification	means the technical specification for the Content Calendr set out on the Client Portal or otherwise provided by CLL from time to time, as the same may be amended from time to time by CCL;
Term	means the Initial Period set out on the Order Form and any extension of that term in accordance with Condition 8;
Third Party IPR	means any content or other Intellectual Property Rights provided by third party suppliers, where such third parties have been specifically identified by CCL;

Tier of Service	means the tier of service applicable for the number of Named Users set out on the Order Form;
User Guide	means the user guide or help pages, FAQs and technical specifications as may be supplied by CCL (including via the Client Portal) containing operating procedures and other instructive information in respect of the use of the Services (as amended from time to time);
Website	means http://www.contentcalendr.com and any other linked CCL website pages delivering the Content Calendr.

- 1.1 unless the context otherwise requires:
- 1.1.1 each gender includes the others and the singular includes the plural and vice versa;
 - 1.1.2 references to conditions are to conditions of these Conditions;
 - 1.1.3 'including' means including without limitation;
 - 1.1.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
 - 1.1.5 condition headings do not affect their interpretation;
 - 1.1.6 references to legislation:
 - (a) include any secondary or subordinate legislation made under or pursuant to that legislation; and
 - (b) exclude any re-enactment or modification of that legislation made on or after the date of these Conditions to the extent they make any Party's obligations more onerous;
 - 1.1.7 writing includes emails and electronic communications delivered by the Services, Software or Client Portal and other permanent forms;

2 Service

- 2.1 Subject to the Client's payment of the Subscription Charge the Client is granted the right to use the Subscription Service in accordance with these Conditions.
- 2.2 Subject to the Client's payment of the Additional Service Fees, CCL shall perform the Additional Services for the Client.
- 2.3 The Client's right to use the Service includes the right to make the Service available to its Named Users and Associates (as identified in the Order Form or otherwise agreed in writing by CCL) provided that the Client:
 - 2.3.1 remains liable for the acts and omissions of its Associates and its and their Named Users as if they were its own; and
 - 2.3.2 shall cease to make the Service available to any party immediately on that party ceasing to be an Associate or Named User.
- 2.4 References in these Conditions to the Client shall include its Associates authorised in accordance with clause 2.3 above and, where the context requires, to the Client's and any Associates' Named Users.
- 2.5 CCL shall provide the Service to the Client in accordance with the terms of these Conditions. CCL shall be entitled to amend these Conditions from time to time. If amendment of the Conditions has (or would have) a material adverse effect on the rights or obligations of the Client, the Client shall be entitled to reject the amendment within 5 Business Days of notification, in which case it shall not take effect until the end of the Initial Term or the current applicable extended term under condition 8. The

Client's continued use of the Services without such notification of rejection shall be deemed to constitute its acceptance of the notified amendments.

- 2.6 CCL shall meet or exceed the relevant Service Levels for the applicable Tier of Service at any time, from the Commencement Date for the Term of these Conditions.

Subscription Services

- 2.7 The Client may elect to upgrade the Tier of Service for any number of Named Users or increase the number of Named Users upon giving CCL at least 3 Business Days prior written notice. CCL shall be entitled to increase the Subscription Charge accordingly.
- 2.8 CCL shall provide the Client with access to the User Guide via the Client Portal.
- 2.8.1 The User Guide may only be used only in connection with the use of the Service.
- 2.8.2 The User Guide remains the property of CCL (or its licensors) at all times.
- 2.9 CCL shall deliver an initial Security Device for each Named User to an authorised Representative of the Client, or to the Named Users directly if agreed between the Parties. Upon receipt of the initial Security Device, the Named Users shall replace any default passwords with personal passwords.
- 2.10 CCL hereby grants the Client a non-exclusive, non-transferable licence to access and use the Content Calendr through its Named Users solely for the purpose of accessing and using the Service for the Client's own benefit, in accordance with the terms of these Conditions and for no other purpose whatsoever.

Additional Services

- 2.11 The Client may purchase Additional Services from CCL:
- 2.11.1 as specified in the Order Form or otherwise agreed in writing between the Parties from time to time; or
- 2.11.2 as ordered by Named Users who have been duly authorised by the Client to purchase Additional Services (in the Order Form or otherwise in writing) from the Client Portal from time to time.

3 Use of Content Calendr

- 3.1 The Content is intended for use by persons appropriately trained, skilled and/or experienced in digital marketing. The Client hereby agrees that all Named Users will be appropriately trained, skilled and/or experienced to use the Content Calendr (in accordance with any approval workflows which are implemented).
- 3.2 Unless specific marketing services are agreed as Additional Services, CCL will not monitor the Client's Content or its use of the Content Calendr. Accordingly: (i) access to the Content Calendr alone does not constitute specific advice or recommendations by CCL in relation to any particular marketing publication or campaign; and (ii) the applicability and use of such Content Calendr is at the Client's own risk.

4 Fees and payment

- 4.1 Unless agreed otherwise in writing between the parties, Fees shall be paid in advance using the payment screens in the Client Portal.
- 4.2 The Subscription Charge shall be paid by the Client monthly or annually in advance according to the payment plan selected by the Client. In the event of annual payment, any period of less than an Operating Year for which the Service is provided (for example in the case of an upgrade in Service Tier or addition of Named Users part way through the current Operating Year) shall be calculated pro rata on the basis of the actual number of days in the relevant period and on the basis that there are 365 days in each calendar year.

- 4.3 CCL may offer the Subscription Services under free Service Tiers, subject to limitations on duration, use or number of users or otherwise as CCL may specify from time to time. At the expiry of the duration of a free Service Tier or once any usage limit has been reached, the Client's instance of Content Calendr will be frozen and continued use shall be subject to it signing up to a paid-for Service Tier. On the first occasion of the Client switching from a free to a paid-for Service Tier, the Initial Period and Operating Year shall be deemed to be reset to run from such date.
- 4.4 All Fees must be paid in pounds sterling using a valid payment type specified in the Client Portal, unless agreed otherwise in writing between the parties. The Client may provide automated payment instructions for renewals of the Fees each month or year, as applicable. CCL shall be entitled to suspend the Services and access to the Content Calendr if and to the extent that renewal payments are not made in full for any reason.
- 4.5 If the parties agree or CCL elects to invoice the Client for any Fees, invoices issued by CCL shall be payable within thirty (30) days after the date of receipt by the Client of the invoice. CCL shall include sufficient details evidencing the calculation of the Fees in each invoice submitted pursuant to condition 4.2.
- 4.6 CCL reserves the right to refuse to provide the Service and/or suspend access to the Content Calendr if the Client fails to pay CCL's undisputed Fees in accordance with the terms of this Agreement.
- 4.7 If CCL provides, at the request of the Client, any advisory or other services in connection with the Service, the Client shall become liable to pay for such services at CCL's current rates for those services.
- 4.8 If any Sales Tax is properly chargeable in respect of any supply made by CCL under these Conditions, the Client shall pay the amount of that Sales Tax to CCL against issue of a proper Sales Tax invoice by CCL.
- 4.9 Without limiting condition 4.1, each amount stated as payable by the Client under this agreement is exclusive of Sales Tax (if any) which shall be added to the amounts specified in this Agreement at the prevailing rate(s).
- 4.10 CCL shall be entitled to suspend the provision of the Services for the duration of any period in which the payment of Fees is overdue and it shall not be obliged to repay any portion of the Subscription Charge paid in advance for any period in which CCL suspends the Service.
- 4.11 CCL shall give to the Client not less than forty five (45) days' written notice of any increase in the Subscription Charge. In the event that the Client is on a Subscription Service yearly plan (whether paid annually or monthly), such notice to expire at the end of the current Operating Year and thereafter on any anniversary of the Commencement Date, however CCL shall not be entitled to increase the Subscription Charge during the Initial Period.
- 4.12 CCL shall be entitled to amend the Additional Service Fees from time to time, which shall be effective for all new requests for Additional Services following the date of notification by CCL (including publication on the Client Portal).
- 4.13 Where sums due under this Agreement are not paid in full by the due date, CCL may, without limiting its other rights, on such sums at a rate of 4% percentage points a year above the base rate of Barclays Bank Plc from time to time in force.
- 4.14 Interest will:
- 4.14.1 accrue on a daily basis; and
 - 4.14.2 apply from the due date for payment until actual payment in full, whether before or after judgment.

5 Security

- 5.1 CCL and the Client will each take all necessary measures to comply with the Security Policy and such other security measures agreed in writing by CCL from time to time and notified to the Client.
- 5.2 Each Party will co-operate with any investigation relating to security that is carried out by or on behalf of CCL or the Client.
- 5.3 The Client will take all necessary measures to ensure that each Associate accessing the Service directly or indirectly complies with the Security Policy and such other security measures agreed in writing by CCL from time to time and notified to the Client.
- 5.4 The Client shall ensure that the Security Devices are personal to the specified Named Users and must not be shared with other Named Users or any other individuals, whether employed or engaged by the Client, an Associate or any other third party. CCL shall be entitled to suspend any or all of the Services or the access of any or all Named Users if it reasonably believes that Security Devices are being transferred or shared in breach of this clause 5.4.
- 5.5 The Client may request the transfer of Named User licences between eligible employees. Subject to CCL's consent to such requests (which shall not be unreasonably withheld), CCL shall effect such transfer within 3 Business Days of the request

6 Undertakings by the Client

- 6.1 The Client for itself and on behalf of each Associate (and its and their Named Users) undertakes in favour of CCL as follows:
 - 6.1.1 not to copy, duplicate or in any way reproduce the Documentation or any other manuals or documents provided by CCL in connection with the Service, nor knowingly to permit the same, without the prior written consent of CCL;
 - 6.1.2 not, without the prior written consent of CCL, to disclose the Documentation or the User Guide or any other manuals and documents provided by CCL in connection with the Service nor make them available in any way to any third party other than, on a need-to-know basis, to employees of the Client, Associates or its subcontractors who agree in writing to be bound by the provisions of this sub-paragraph and to take all reasonable precautions to prevent any unauthorised disclosure;
 - 6.1.3 to effect and maintain reasonable security measures to safeguard the Security Device, the Software, the System, the User Guide and any other operating manuals and documents provided by CCL under these Conditions from access or use by any third party or unauthorised employees of the Client;
 - 6.1.4 to notify CCL promptly of any unauthorised disclosure, use or copying of the User Guide or any other operating manuals and documents provided by CCL in connection with the Service, of which the Client has notice;
 - 6.1.5 not to remove, suppress or modify in any way any proprietary markings including any trade mark or copyright notice on the Website and/or Client Portal;
 - 6.1.6 to be solely responsible for providing and maintaining all computer equipment and software and telecommunications connectivity necessary for the Client to access the Service;
 - 6.1.7 not to re-sell, re-market or otherwise distribute any portion of the Service or offer the Service to others other than in accordance with the Operating Rules or unless specifically permitted in writing by CCL;

- 6.1.8 to be solely responsible for any Content submitted by the Client to the Database or to CCL in connection with the Service;
- 6.1.9 to be responsible for and at its own cost:
 - (a) obtain and maintain all necessary permissions, consents and licences to enable it to use the Service in the countries in which the Client accesses the Service;
 - (b) comply with all applicable conventions and codes of practice and all applicable laws, regulations, and other similar forms of legislation in all relevant jurisdictions that may relate to the Client's use and access of the Service;
- 6.1.10 to take all necessary precautions to ensure that Content supplied to the Database is:
 - (a) accurate; and
 - (b) is free from viruses by scanning the Content in accordance with Good Industry Practice.
- 6.2 The Client shall, at its own cost, be responsible for obtaining (or obtaining relief from any requirements for) all regulatory approvals which Client is required to obtain.
- 6.3 CCL is not obliged to monitor or moderate Content. Any Content or other communications submitted by the Client must conform to standards of accuracy, decency and lawfulness, which shall be applied in CCL's discretion, acting reasonably. In particular, the Client warrants (on behalf of itself, its Associates and its and their Named Users) that any Content or other communications submitted to the Content Calendr are:
 - 6.3.1 its own original work and lawfully submitted;
 - 6.3.2 factually accurate or the Client's own genuinely held belief;
 - 6.3.3 provided with the necessary consent of any third party;
 - 6.3.4 not defamatory or likely to give rise to an allegation of defamation;
 - 6.3.5 not offensive, obscene, sexually explicit, discriminatory or deceptive; and
 - 6.3.6 unlikely to cause offence, embarrassment or annoyance to others.
- 6.4 The Client hereby confirms that it does not consider itself to be a consumer and is not acting as a consumer for the purposes of the Consumer Protection Act 2015 or any other consumer law or regulations in the United Kingdom.

7 Data processing

- 7.1 The Client will provide CCL with the Content and such instructions and other information as CCL reasonably needs to perform the Services.
- 7.2 CCL will:
 - 7.2.1 process data and other information supplied by the Client ("Data") solely to provide the Services under these Conditions and in accordance with the Client's lawful and reasonable written instructions;
 - 7.2.2 comply with its obligations under the Data Protection Legislation concerning the implementation of appropriate organisation and technical security measures to safeguard the Data;
 - 7.2.3 not disclose the Data or other information supplied by the Client to any third party other than on the Client's written instructions or as required by law (save where such data has been anonymised and/or aggregated and used for statistical or analytical purposes); and

- 7.2.4 immediately forward to the Client communications from data subjects, regulatory bodies and other third parties concerning the Data and not respond to or act on such communications without the Client's prior agreement.
- 7.3 The Client may request a copy of the Content contained in the Database, which CCL shall provide as an Additional Service, subject to an Additional Service Fee to be calculated by reference to any then current CCL price list or as otherwise may be agreed between the parties.
- 7.4 The Client warrants that it has the authority to provide the Personal Data to CCL in connection with the performance of the Service (whether contained in the Content, Data or otherwise) and that the Personal Data provided to CCL has been processed in accordance with Data Protection Legislation.
- 7.5 If any action or proceeding is brought against CCL in respect of any alleged infringement of any Data Protection Legislation arising out of a breach of Condition 7.4, the Client shall indemnify CCL from and against all costs, damages, liabilities, and losses agreed to be paid by way of settlement or compromise by, or finally awarded against CCL as a result of or in connection with such action or proceeding.

8 Term

This Agreement commences on the Commencement Date, and unless terminated earlier in accordance with the terms of these Conditions, remain in force for the Initial Period and will continue thereafter from year to year unless and until the Client gives CCL at least ninety (90) days' written notice of termination such notice to expire at the end of the Initial Period and thereafter on any anniversary of the end of the Initial Period.

9 Intellectual Property Rights

9.1 Database Intellectual Property Rights

The Client acknowledges that all Intellectual Property Rights in the Database are and shall at all times remain the property of CCL.

9.2 Content Intellectual Property Rights

- 9.2.1 All Intellectual Property Rights in the Content and all amendments or additions to the Content belong to the Client. CCL may use all such rights only under these Conditions.
- 9.2.2 The Client grants CCL a licence to: (i) use, edit, create databases from, copy and store the Content solely to perform, and for the Term of, these Conditions; and (ii) subject to aggregation and anonymisation, to incorporate information relating to the Content and the Client's use of the Content into statistical analyses, knowhow and for use in service development and marketing purposes.
- 9.2.3 CCL hereby assigns (and will ensure that its employees or subcontractors assign) to the Client all Intellectual Property Rights which currently, or may in future, exist in the Content and any amendments or additions to the Content and, in each such case, so far as any of those vest in CCL, its employees or subcontractors.

9.3 Third Party IPR

- 9.3.1 The Client acknowledges and accepts that the CCL may make use of Third Party IPR in the provision of the Service.
- 9.3.2 CCL shall licence or procure the licensing of any such Third Party IPR to the Client as is necessary to receive the benefits of the Service. However, CCL may specify that the Service shall be provided subject to the applicable Third Party IPR terms (including any limitations or end-user obligations set out

therein). In such event the Third Party IPR terms shall be deemed to be incorporated into and form part of the Agreement.

9.3.3 CCL accepts no liability for the content or accuracy of any Third Party IPR.

9.4 Other Intellectual Property Rights

9.4.1 Save for the Content, the Client for itself and on behalf of each Associate acknowledges that all Intellectual Property Rights in the Service including the Content Calendr, Database, Software, the Documentation and all related manuals as between CCL and the Client are and shall at all times remain the property of CCL or its licensors. No rights to or property in the Service shall pass to the Client. No right to modify, adapt or create derivative works from the Service or any part of it is granted to the Client or any Associate.

9.4.2 CCL grants to the Client and its Associates, where relevant, a licence to use Content Calendr, the Databases, Software and Documentation for and to the extent required by it or them to enjoy the Services only for the term of this Agreement.

9.5 Without limitation to the foregoing, the Client shall have no right to use or allow the use of Content Calendr in order to:

9.5.1 create or allow others to create competitor service or product;

9.5.2 disassemble, decompile, reverse-engineer or create derivative databases or other works out of Content Calendr for internal or external purposes;

9.5.3 use Content Calendr in respect of the provision of services by the Client to any third parties (including Associates); or

9.5.4 to automatically download or index Content Calendr, the Website, User Guide or Documentation by any means.

9.6 If any action or proceeding is brought against the Client or any Associate in respect of any alleged infringement of any Intellectual Property Right in respect of the Service by a third party, or against CCL in respect of any alleged infringement or any Intellectual Property Right in respect of the Content (in each case, an **IPR Claim**) then CCL or Client, as appropriate shall indemnify the other Party from and against all costs, damages, liabilities, and losses agreed to be paid by way of settlement or compromise by, or finally awarded against the other Party as a result of or in connection with an IPR Claim provided that:

9.6.1 the indemnified Party shall notify the other Party in writing of any such allegation or claim within five Business Days after becoming aware of the same;

9.6.2 the indemnified Party shall make no verbal or written admission relating to the IPR Claim without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed; and

9.6.3 the indemnifying Party (or any person nominated by it) shall at its own expense be entitled to conduct and/or settle all negotiations and litigation so arising and the indemnified Party shall at the other Party's expense give to the other Party (or any person nominated by it) such reasonable assistance in connection therewith as the indemnifying Party from time to time may reasonably request.

9.7 The exclusions and limitations under condition 14 shall not apply to the indemnity under condition 9.6.

9.8 In the event of any claim or allegation in respect of breach of any Intellectual Property Rights being made in respect of the Service, CCL may:

9.8.1 obtain the right for the Client to continue using the Service in the manner permitted under these Conditions; or

9.8.2 modify the Service so as to avoid the alleged infringement provided that such modification shall not, in the reasonable opinion of the Client, materially detract from the overall performance of the Service.

10 Warranties and undertakings

- 10.1 CCL hereby warrants to the Client that the Service will provide the facilities and functions set out in the Technical Specifications when accessed in accordance with the User Guide. CCL must, in accordance with the Service Levels, correct any failure of the Services to perform in accordance with the Technical Specifications.
- 10.2 CCL hereby further warrants that it has the right to grant access to the Service to the Client on the terms of these Conditions and that the User Guide is and will continue to be of a standard which will enable trained personnel of the Client to understand and operate the Service.
- 10.3 CCL undertakes to the Client:
- 10.3.1 that it will provide the Service in a timely, professional and efficient manner at least in accordance with the Service Levels and Good Industry Practice and using adequately trained and qualified personnel;
 - 10.3.2 it will follow its normal procedures and processes and act in accordance with Good Industry Practice to test for viruses contained in or introduced into the Website and act in accordance with Good Industry Practice to prevent viruses from being introduced into or remaining within the Website;
 - 10.3.3 it will at all times comply with the provisions of the Data Protection Legislation;
 - 10.3.4 it has and will maintain in force at all relevant times, all licences, permit and consents necessary to provide the Service and perform its obligations as appropriate in accordance with the terms of this agreement; and
 - 10.3.5 it is and will at all relevant times remain in compliance with all applicable laws, statutes, regulations and codes of practice.
- 10.4 CCL does not warrant that the use of the Service will be uninterrupted or error-free.
- 10.5 Without prejudice to any other provision of these Conditions, if CCL receives written notice from the Client of any breach by CCL of any of the warranties contained in this condition 10, CCL shall use commercially reasonable endeavours to remedy that breach as soon as reasonably practicable (and, in any event, within 30 days) after receiving that notice, failing which, the Client may pursue any rights or remedies available to it.
- 10.6 CCL will not be liable for any deficiency in the Service attributable to operator error, deficiencies or errors relating to any third party component not provided by CCL or third party connectivity necessary to access the Service. When notifying a defect or error the Client must (so far as it is able) provide CCL with one or more documented examples of such defect or error.
- 10.7 CCL will have no obligation under this condition 10 to the extent a claim is based on use of the Services in a manner inconsistent with this agreement or as a result of negligence or wilful misconduct of the Client.

Restrictions on Use

- 10.8 As a condition of access to the Content Calendr, the Client agrees:
- 10.8.1 not to use the Service to commit any act of fraud;
 - 10.8.2 not to use the Service to distribute viruses or malware or other similar harmful software code;
 - 10.8.3 not to use the Service for purposes of promoting unsolicited advertising or sending spam;

- 10.8.4 not to use the Service to simulate communications from CCL or another service or entity in order to collect identity information, authentication credentials, or other information ('phishing');
- 10.8.5 not to use the Service in any manner that disrupts the operation of Content Calendr or CCL's business or the business of any other entity;
- 10.8.6 not to use the Service in any manner that harms minors;
- 10.8.7 not to perform or promote any unlawful activity;
- 10.8.8 not to represent or suggest that CCL endorses any other business, product or service unless CCL has separately agreed to do so in writing;
- 10.8.9 not to use the Service to gain unauthorised access to or use of computers, data, systems, accounts or networks; and
- 10.8.10 not to attempt to circumvent Security Devices.

11 Training

- 11.1 The parties may agree the provision of training by CCL to the Client in the use of the Services as an Additional Service, subject to such terms as the parties may agree from time to time.

12 Helpdesk

- 12.1 CCL shall, during the Operating Hours, provide the Client's Representative with any reasonable technical advice and assistance by a telephone and/or email facility (**Helpdesk**), as the Representative may from time to time request, to resolve technical difficulties and queries in relation to the Service. The language for all Helpdesk enquiries will be English.

13 Equipment

- 13.1 The Client must provide, at its own cost, all telecommunication services, computers and other equipment or services necessary to enable it to have access to the Service. The Client must comply with all rules and regulations that apply to the communication means by which the Client obtains access to the Service.
- 13.2 The Client on its own behalf and on behalf of each Associate acknowledges that it will comply with the terms of the Agreement (including any fair usage policy notified on the Client Portal) for the conduct of the Service and which is necessary for the orderly and efficient provision of the Service to Clients and its Associates.

14 Rights and liabilities

- 14.1 CCL may subcontract the performance of any or all of its duties and obligations under these Conditions as it shall in its absolute discretion consider necessary or expedient, provided that CCL remains liable for the acts and omissions of those subcontractors as if they were its own.
- 14.2 The aggregate liability of CCL to the Client in respect of all claims, losses or damages, whether arising from contract, tort (including negligence) or otherwise under or in connection with these Conditions arising in any Operating Year (where, for a series of connected claims, the Operating Year in question shall be the Operating Year of the first event giving rise to a claim), shall in no event exceed the aggregate of all Fees paid or payable by the Client in such Operating Year.
- 14.3 Subject to conditions 14.2 and 14.4, neither Party will be liable to the other Party for:
 - 14.3.1 any indirect, special or consequential loss or damage; or
 - 14.3.2 any loss of profits, turnover, data, business opportunities, anticipated savings or marketing outcomes or damage to goodwill (whether direct or indirect).
- 14.4 Neither Party limits its liability for:

- 14.4.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- 14.4.2 fraud or fraudulent misrepresentation by it or its employees; or
- 14.4.3 any other liability which cannot lawfully be excluded or limited.

15 Termination

- 15.1 Without prejudice to its other rights and remedies either Party may, by written notice to the other (the **Breaching Party**), terminate these Conditions, with immediate effect, upon or at any time following the occurrence of one or more of the following events:
 - 15.1.1 the Breaching Party is in material or persistent breach of any of its obligations under these Conditions and either that breach is incapable of remedy, or the Breaching Party has failed to remedy that breach within 20 Business Days after receiving written notice requiring it to remedy that breach; or
 - 15.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction.
- 15.2 Notwithstanding the termination of the Agreement, the Client shall remain liable to pay to CCL all sums accrued due on or prior to the date of termination.
- 15.3 Within a reasonable period after termination of the Agreement (and in any event within 60 days of termination), howsoever occurring, the Client must return to CCL the User Guide and all manuals and documents belonging to CCL together with all copies thereof and will certify in writing to CCL that all actions required under this subcondition have been duly carried out and CCL must return to the Client all copies of information the Client may have given to CCL in connection with these Conditions.

16 Confidentiality

- 16.1 Each Party shall keep confidential all information of the other party relating to the Service, the contents of these Conditions, the business of the other Party or any other information of the other Party which ought reasonably to be considered confidential or proprietary. For the purposes of this condition, any Data provided by the Client to CCL shall be deemed to be confidential information of the Client and shall not be disclosed save as contemplated by these Conditions and the provisions of the Service. The provisions of this condition shall not apply to:
 - 16.1.1 any information which was in the public domain at the Commencement Date;
 - 16.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of these Conditions;
 - 16.1.3 any disclosure required by law or a Competent Authority or otherwise by the provisions of these Conditions; or
 - 16.1.4 any Data which a Client designates as public information.
- 16.2 The foregoing confidentiality obligations shall remain in full force and effect notwithstanding the expiry or earlier termination of the Agreement.

17 Force Majeure

- 17.1 A Party will not be liable if delayed in or prevented from performing its obligations under these Conditions due to a Force Majeure Event, provided that it:

- 17.1.1 promptly notifies the other of the Force Majeure Event and its expected duration, and
- 17.1.2 uses reasonable endeavours to minimise the effects of that event.
- 17.2 If, due to a Force Majeure Event, a Party:
 - 17.2.1 is unable to perform a material obligation, or
 - 17.2.2 is delayed in or prevented from performing its obligations for a continuous period of more than 30 Business Days,the other Party may, within 30 Business Days terminate these Conditions on notice.

18 General

18.1 Compliance with law

Each Party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties under these Conditions, its employees, agents and representatives will comply with all applicable laws and regulations, provided that neither Party shall be liable for any breach to the extent that such breach is directly caused or contributed to by any act or default of the other Party or its employees, agents and representatives.

18.2 Assignment and subcontracting

CCL may novate, assign or subcontract any or all of its obligations under this Agreement at its discretion. The Client may not transfer or assign or otherwise create an interest in its rights under this Agreement without the prior written consent of CCL.

18.3 Relationship

The Parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.

18.4 Survival

Provisions which by their terms or intent are to survive termination hereof will do so.

18.5 Variation

CCL may vary Conditions by 1 month's prior notice to the Client, either directly or by means of a notice within the Service by any log-in banner or similar prominent means.

18.6 Severability

The unenforceability of any part of these Conditions will not affect the enforceability of any other part.

18.7 Waiver

Failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of these Conditions shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these Conditions.

18.8 Notices

18.8.1 Notices under these Conditions will be in writing and sent to the person and address in condition 18.8.2. They may be given, and will be deemed received:

- (a) by first-class post: *two* Business Days after posting;
- (b) by hand: on delivery;
- (c) by facsimile: on receipt of a successful transmission report from the correct number,

- (d) by e-mail: 24 hours from delivery if no notice of delivery failure is received; and
- (e) by electronic communications by means of the Service (for notices by CCL) on access by the Client or any of its Associates of the Service at any time after posting of the electronic communication or notice by means of the Service.

18.8.2 Notices, other than those under conditions 18.8.1(e), will be sent:

- (a) to CCL to: Noel Agyei, 104 Cavell Street, London E1 2JA, email: noel@astp.co, and
- (b) to the Client contact specified on the Order Form.

18.9 Equitable relief

Each Party recognises that its breach or threatened breach of these Conditions may cause the other irreparable harm, and that the other may therefore be entitled to injunctive or other equitable relief.

18.10 Mitigation

In respect of any indemnity given by either Party under these Conditions, the Party that receives the benefit of the indemnity shall take all reasonable steps so as to reduce or mitigate the loss covered by the indemnity.

18.11 Rights of third parties

For the purposes of the Contracts (Rights of Third Parties) Act 1999, these Conditions are not intended to and do not give any person who is not a party to them any right to enforce any of the provisions. However, this does not affect any right or remedy of such a person that exists or is available apart from that Act.

19 Dispute resolution

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with these Conditions within twenty (20) Business Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the *finance director (or equivalent)* of each Party.
- 19.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 19.3 If the dispute cannot be resolved by the Parties pursuant to condition 19.2, the Parties shall refer it to mediation pursuant to the procedure set out in condition 19.5 unless either Party does not agree to mediation.
- 19.4 The obligations of the Parties under these Conditions shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and each Party, its subcontractors and their officers, employees and agents shall comply fully with the requirements of these Conditions at all times.
- 19.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
 - 19.5.1 A neutral adviser or mediator (the **Mediator**) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (ten) Business Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (ten) Business Days from the date of the proposal to appoint a Mediator or within ten (ten) Business Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute

Resolution (International Dispute Resolution Centre 70 Fleet Street, London, EC4Y 1EU) ("CEDR") to appoint a Mediator.

- 19.5.2 The Parties shall within ten (ten) Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
 - 19.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - 19.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - 19.5.5 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Business Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts unless the dispute is referred to arbitration pursuant to the procedures set out in condition 19.6.
- 19.6 Subject to condition 19.2, the Parties shall not institute court proceedings until the procedures set out in conditions 19.1 and 19.3 have been completed.

20 Governing Law

These Conditions and any Agreement are governed by the law of *England and Wales*.

21 Entire agreement

- 21.1 Any Agreement shall incorporate these Conditions to the exclusion of all others. These Conditions and the Order Form, together with the documents referred to in them, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 21.2 Each of the Parties acknowledges and agrees that in entering into the Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in these Conditions and any document referred to in them. The only remedy available to either Party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of these Conditions.
- 21.3 Nothing in these Conditions shall operate to exclude any liability for fraud.