

## Digitally Charged General Conditions Of Service – November 2020

“Digitally Charged” - means Digitally Charged Limited (company number 10930582) 7 St John Street, Mansfield, Nottinghamshire, NG18 1QH United Kingdom

“Customer” – means any person, partnership, company or organisation which uses or purchases Services from Digitally Charged

### 1. General Terms

- 1.1 These General Terms and Conditions of Service apply to any and all Services provided by Digitally Charged to the Customer. By engaging Digitally Charged to provide Services the Customer accepts these terms.
- 1.2 Digitally Charged will exercise and apply reasonable skill and care in supplying the Services.
- 1.3 Digitally Charged shall use reasonable endeavours to supply the Services by any specific date but time shall not be of the essence for the performance of Services
- 1.4 The Customer may at any time request and Digitally Charged may at any time recommend changes in the Services. Digitally Charged will advise the Customer of likely or recommended changes in price or timescales. A change will only become valid if recorded in writing which shall include email confirmation
- 1.5 The Customer shall provide Digitally Charged the required access and administrative rights Customer tools and systems which Digitally Charged deems necessary in order to deliver and monitor the performance of the Services, including but not limited to Google Analytics and Customers Websites for example.
- 1.6 The Customer will obtain all necessary consents licenses and approvals in relation to any materials made available by the Customer in order for Digitally Charged to deliver the Services. This includes but is not limited to all art work, trademarks or logos and will indemnify Digitally Charged for any failure of the Customer to do so.
- 1.7 The Customer shall be responsible for providing where necessary co-operation from Customer third parties required to deliver the Services

### 2. Charges

- 2.1 All charges are due on receipt of a valid invoice from Digitally Charged and are payable within 14 days from the invoice date without right of set off or deduction. All charges are stated exclusive of VAT or other applicable taxes or duties which shall be payable by the Customer at the prevailing rate.
- 2.2 Charges shall be paid electronically by direct debit or bank transfer in £GBP to the account details as specified on any invoice or communicated otherwise from time to time
- 2.3 Digitally Charged charges are for work performed during Normal Business Hours unless otherwise stated. All full list of Standard Charges can be found on our website or provided as a copy on request.
- 2.4 The Customer will pay for all reasonable out of pocket expenses including travelling, accommodation and subsistence. Copies of receipts shall be made available to the Customer on request.
- 2.5 Pricing in any Proposal submitted by Digitally Charged shall remain valid for a period of 30 days from the date of submission. After the 30 day period unless specifically agreed in writing by Digitally Charged the offer shall expire

### 3. IPR

- 3.1 Each party agrees that all Background Intellectual Property rights shall remain the exclusive property of the party owning it
- 3.2 The Customer grants Digitally Charged a personal, non exclusive, non transferable, revocable license of Customers Intellectual Property Rights as requires for the purposes of delivering the Services

### 4. Data Protection

- 4.1 For the purposes of any Services provided by Digitally Charged to the Customer the Customer remains the Data Controller and Digitally Charged is the Data Processor. Both parties agree that they shall at all times during the delivery of the Services comply with EU Regulation 2016/679 (General Data Protection Regulation or GDPR) and the Data Protection Act 1998

### 5. Liabilities

- 5.1 Nothing in this Agreement excludes or limits liability in respect of
  - (a) death and personal injury,
  - (b) fraud or fraudulent misrepresentation
  - (c) any other liability which cannot be excluded or limited by law.
- 5.2 In no event will Digitally Charged be liable for
  - (a) loss of profits, loss of revenue or anticipated savings
  - (b) loss of opportunity, loss of goodwill or injury to reputation
  - (c) any special, consequential or indirect loss or damage
- 5.3 Subject to the above the total aggregate liability of Digitally Charged arising out of or in connection to this agreement shall be limited to 100% of the charges paid in the previous 6 months in which the cause or causes of action first arose. These limits of liability shall apply in the aggregate and not per event or incident

### 6. Termination

- 6.1 Either party may terminate this Agreement immediately by written notice if
  - (a) the other party is in material breach of this Agreement where the breach is not capable of remedy within 30 days receiving written notice to do so.
  - (b) the other party is subject to an Insolvency Event.
- 6.2 Material breach includes
  - (a) failure by the Customer to pay charges to Digitally Charged that are properly due under this Agreement.
  - (b) where the Customer is using material or engaging in activity which is unlawful or fraudulent

## 7. Subcontracting, Variation and Law

- 7.1 This Agreement may not be assigned, transferred or otherwise disposed of by the Customer without the written consent of Digitally Charged.
- 7.2 Digitally Charged may use subcontractors in order to provide the Services and Digitally Charged will not be relieved of any of its obligations as a consequence of using a subcontractor. Digitally Charged may refer a Customer to a third party. Digitally Charged takes no responsibility for the performance of any third party.
- 7.3 No variation or changes to the Services shall be effective unless it is in writing and agreed by both parties
- 7.4 This Agreement is governed by the laws of England and Wales under the jurisdiction of the courts of England

## 8. Design Work

- 8.1 After an initial consultation with Digitally Charged the Customer is required to sign a Design Authorisation Document which has either been completed by the Customer or completed by Digitally Charged on the Customer's behalf. Once the signed document has been received by Digitally Charged along with any requested or required material Digitally Charged aim to present an Initial Design to the Customer within 5 Working Days.
- 8.2 Once the Initial Design has been received by the Customer the Customer has 5 Working Days to comment on the Initial Design.
- 8.3 Included in the Standard Charges for design work is one iteration of the design based upon a single set of Customer comments. Once Digitally Charged has amended the designs in line with the Customer comments this shall form the Final Design. If no comments are made within the 5 Working Day period the Customer by default accepts the Initial Design as the Final Design. Any further changes requested by the Customer shall be subject to additional charges
- 8.4 All Creatives produced on behalf of the Customer remain the property of Digitally Charged. Digitally Charged warrants that the Creatives will function using specific software and programs used by Digitally Charged. Digitally Charged does not warrant that any Creative will function on any other platform that is not used by Digitally Charged.
- 8.5 Digitally Charged shall release the Creative to the Customer for a set fee as set out in the Schedule of Fees

## 9. Programmatic

- 9.1 All Click Through Rates quoted by Digitally Charged are indicative only. Digitally Charged does not guarantee a specific CTR when running Programmatic Campaigns on behalf of the Customer.

9.2 Unless agreed otherwise in writing the minimum spend on Programmatic Campaigns is £1,000 for a maximum period of 30 calendar days.

9.3 Included within the Charges for a programmatic campaign is one 30 minute initial consultation and one 30 minute follow up consultation at the end of every 30 day period. The Customer may request that the 30 minute follow up consultation is split into two 15 minute consultations to discuss the performance of a campaign before the end of the 30 day period.

9.4 Also included within the Charges for a programmatic campaign is a report issued within 5 Working Days of the end of the 30 calendar day period which will detail the number of Impressions served, the Click Through Rate, the performance of each sized impression and the percentage of views by device type.

9.5 Additional reports can be requested at anytime for the charge as set out in the document titled Fees.

### Definitions

**Background Intellectual Property** – means any material owned by either party prior to the engagement to provide Services

**Click Through Rate** – The number or percentage of clicks on an Impression

**Creative** – means the content which shall be used by Digitally Charged as part of the Services

**Design Authorisation Document** – means the form confirming the Customer's design instruction

**Final Design** – means the final draft of the artwork which becomes the Creative

**Impression** – means a single view of a Creative displayed in a digital format

**Initial Design** – means the first draft of artwork produced

**Normal Business Hours** – Means 9am – 5pm on any Working Day

**Requested/Required Material** – means any Customer artwork or designs which the Customer requests to be included in any Creative

**Services** – Means the offerings made available to Customers by Digitally Charged and or any information provided under a proposal

**Standard Charges** – means the Digital Services Pricing document a copy of which is available on request.

**Working Days** – Means any day excluding Saturdays, Sundays and bank Holidays recognised in England and Wales