

Terms and Conditions for the supply of PPC services

1. Definitions and Interpretation

1.1 In this Contract, unless the context otherwise requires, the following expressions have the following meanings:

Business Day	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Client	means the person identified as such on the Order Form;
Commencement Date	means the date referred to in the Order Form being the date on which the provision of the PPC Services will commence;
Company	means 22PointSix (Technology) Limited whose registered office is at Greenacre Court, Station Road, Burgess Hill, West Sussex, RH15 9DS company registration 07026895;
Conditions	these terms and conditions as amended from time to time in accordance with clause 15;
Contract	the contract between the Company and the Client for the supply of PPC Services in accordance with these Conditions;
Confidential Information	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to, or in connection with, this Contract (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
Designated Search Engine	means a search engine on which the Company shall perform the PPC Services as chosen by the Client;
End Date	the date on which the provision of the PPC Services comes to an end and this Contract terminates being the date: (i) as set out in the Order Form in the event of fixed term; or (ii) if the PPC Campaign is not a fixed term or the Client notifies the Company that it wishes to continue the supply of PPC Services at the expiry of a fixed term on the expiry of one month's written notice served by either party on the other to terminate this Contract;
Fees	means the sums payable to the Company and/or a search engine provider for the PPC Services as set out in the Order Form or calculated by reference to the rates set out in the Order Form (as the case may

- be);
- Intellectual Property Rights** means:
- (a) any and all rights in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions;
 - (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);
 - (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and
 - (d) the right to sue for past infringements of any of the foregoing rights;
- Order Form** the Client's pro-forma order form setting out, inter alia, details of the Client and signed by the Client;
- PPC** pay per click services;
- PPC Campaign** means the PPC advertising campaign referred to in the Order Form;
- PPC Proposal** means a document to be prepared by the Company pursuant to clause 5.4 detailing the proposed PPC Campaign(s) and, where relevant, other information pertaining to the PPC Services;
- PPC Services** means the PPC advertising management services to be provided by the Company including but not limited to the PPC Campaign and the PPC Setup;
- PPC Setup** means the services of the Company in setting up the PPC Campaign(s) as set out in the Order Form;
- Required Information** means the information (and materials) listed in the Order Form and/or notified to the Client by the Company which the Client shall supply to the Company to enable the Company to carry out the PPC Services; and
- Website** means the Client's website located at the URL set out on the Order Form.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The Order Form forms part of this Contract and shall have effect as if set out in full in the body of these Conditions. Any reference to the Contract includes the Order Form.
- 1.4 A reference to writing or written includes fax and email.
- 2 **Basis of Contract**
- 2.1 The Order Form constitutes an offer by the Client to purchase the PPC Services in accordance

with these Conditions.

- 2.2 The Order Form shall only be deemed to be accepted when the Company signs the Order Form at which point and on which date the Contract shall come into existence.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 20 days from its date of issue.

3. Obligations of the Client

- 3.1 The Client shall provide the Required Information to the Company no later than 5 days before the Commencement Date.
- 3.2 The Client agrees not to undertake any other PPC campaign for the Website(s) which is the subject of the PPC Services pursuant to this Contract for as long as the Company is providing the PPC Services.
- 3.3 The Client shall permit the Company to paste its 'conversion code' onto the Website and shall not do anything to remove or alter such 'conversion code'.

4. Nature of Engagement

The Company shall at all times be responsible for organising how and in what order the PPC Services are performed and shall liaise with the Client (or the Client's representative) to ensure that due account is taken of the impact of the timing of the PPC Services to be performed upon the activities of the Client and any other contractors, consultants and similar third parties also engaged by the Client.

5. PPC Proposal

- 5.1 The Company shall provide the PPC Services with reasonable skill and care.
- 5.2 The Client acknowledges that the requirements for the PPC Setup and the PPC Services will be based on the Required Information provided by the Client.
- 5.3 Upon receipt of the Required Information from the Client, the Company shall conduct keyword research which shall include, but not necessarily be limited to, an examination of the Website, online research and the use of other suitable methods and tools.
- 5.4 Following the receipt of the Required Information, the Company shall prepare and present to the Client the PPC Proposal which shall include details of the keywords and campaigns recommended by the Company.
- 5.5 Upon receipt of the PPC Proposal, the Client shall have a period of 5 Business Days to review the same and to either approve or amend the PPC Proposal.
- 5.6 In the event that the Client proposes reasonable amendments to the PPC Proposal, the Company shall incorporate such amendments into a revised PPC Proposal which shall be submitted to the Client for approval.
- 5.7 In the event that the Company submits a revised PPC Proposal to the Client, the Client shall have a period of 3 Business Days from receipt of the amended PPC Proposal to review and approve the same. Further amendments shall be a matter of agreement between the Parties at the time.
- 5.8 In the event that the Client proposes amendments which the Company opposes, the Company shall give detailed reasons for its opposition. The Client shall reserve the right to insist upon any such opposed amendments, however the Company shall bear no responsibility for any negative effects thereof on the effectiveness of the PPC Campaign(s).
- 5.9 Following receipt of the approved PPC Proposal from the Client, the Company shall set up

the agreed PPC Campaign(s) on the Designated Search Engine(s) at the earliest opportunity.

- 5.10 At the earliest opportunity following the end of each month of the Contract the Company shall prepare and submit to the Client a visibility report demonstrating the results and effectiveness of the PPC Campaign(s).
- 5.11 The Client acknowledges and accepts the following:
 - 5.11.1 The Company cannot control search engines and therefore cannot provide any guarantee of success of the PPC Campaign. In particular, but without limiting the generality of the foregoing, the Designated Search Engine(s) may change their policies or functionality in such a way that will have a detrimental effect on the effectiveness of the PPC Campaign(s). Where ongoing PPC Services are to be provided, the Company shall use reasonable endeavours to counteract any detrimental effects resulting from any such changes.
 - 5.11.2 The Company shall not be responsible or liable for any detrimental effect on the effectiveness of the PPC Campaign(s) which results from any activity of the Client or any third party including, but not limited to, alterations to the Website.
 - 5.11.3 The effectiveness of the PPC Campaign(s) will be determined in part by the budget allotted thereto and available therefor. Failure by the Client to make the required budget(s) available may have a negative effect on the related PPC Campaign(s). The Company accepts no responsibility for any such negative effects.

6. Fees

- 6.1 In consideration of the PPC Services the Client shall pay the Fees.
- 6.2 Payment of Fees shall be made in the case of the set up fee (if applicable) and the first monthly management fee before the commencement of the PPC Campaign and in the case of subsequent monthly management fees in advance no later than the first day of the month to which the management fee relates. If payment is not received by the relevant due date the Company reserves the right to suspend the provision of the PPC Services.
- 6.3 The Company shall keep the Client fully informed of any and all sums due in relation to the PPC Campaign(s). The Client shall transfer all such sums to the Company for payment to the Designated Search Engine(s) before the commencement of the PPC Campaign.
- 6.4 All sums quoted are exclusive of VAT which shall be added at the prevailing rate unless specifically stated otherwise.
- 6.5 Any payment made by credit or debit card will be subject to a 1.5% handling charge.

7. Intellectual Property

- 7.1 The Company shall use material provided by the Client in addition to its own material in performing the PPC Services.
- 7.2 The Intellectual Property Rights subsisting in material provided by the Client shall remain vested in the Client unless the Client expressly indicates otherwise.
- 7.3 The Intellectual Property Rights subsisting in material provided by the Company shall be assigned to the Client upon receipt by the Company of all Fees due under the Contract. Upon such assignment, the Company shall be deemed to have waived all moral rights in respect of such work arising out of Chapter IV of the Copyright Designs and Patents Act 1988. Following such assignment, the Client shall be free to use such materials including, but not limited to, the keywords included in the PPC Campaign(s), in the same PPC Campaign(s) or for any other purposes.

8. Limitation of Liability

- 8.1 Nothing in this Contract shall limit or exclude the Company's liability for:
 - (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation; or

- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 9.1, the Company shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill;
 - (f) loss of use or corruption of software, data or information; and
 - (g) any indirect or consequential loss.
- 8.3 Subject to clause 8.1, the Company's total liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to a sum equal to the Fees paid in the month in which the liability or breach arose.
- 8.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.

9. **Client's Warranties**

- 9.2 The Client warrants to the Company that:
- (a) it has full power and authority to enter into and perform this Contract and without prejudice to the generality of the foregoing it is the full legal and beneficial owner of the Website and the Required Information and providing the same to the Company shall not infringe any Intellectual Property Rights of any third party, moral rights, rights of privacy, rights of publicity, or any other rights whatsoever of any person; and
 - (b) the Website and the Required Information is not, under the laws of the jurisdiction of England and Wales obscene, blasphemous, offensive to religion, or defamatory of any person and does not contain any material which has been obtained in violation of the Data Protection Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Official Secrets Act 1989, or any analogous domestic or foreign legislation and nothing contained in the Website or the Required Information will constitute a contempt of court.
- 9.3 The Client shall not enter into any agreement or arrangement which might conflict with the Company's rights under this Contract or might interfere with the Company's performance of its obligations under this Contract.

10. **Confidentiality**

- 10.1 Each party undertakes to the other that, unless authorised in writing by the other party, it shall at all times during the continuance of this Contract and for twelve (12) months after its termination:
- (a) keep confidential all Confidential Information;
 - (b) not disclose any Confidential Information to any other party;
 - (c) not use any Confidential Information for any purpose other than as contemplated by this Contract; and
 - (d) not make any copies of, record in any way or part with possession of any Confidential

Information.

10.2 Disclosure under this Contract may be made only to the extent that is necessary for the purposes contemplated by this Contract, or as required by law.

10.3 Either Party may use any Confidential Information for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of that Party.

11. **Term and Termination**

11.1 This Contract shall commence on the Commencement Date and, subject to the provisions of this clause 11, shall terminate on the End Date.

11.2 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (f) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 10 Business Days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(b) to clause 11.2(g) (inclusive); or
- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11.3 The termination of this Contract shall be without prejudice to any rights which have already accrued to either of the Parties under this Contract.

12. **Nature of the Contract**

12.1 This Contract is personal to the Parties and neither Party may assign, mortgage, or charge (otherwise than by floating charge) any of its rights hereunder, or otherwise delegate any of

its obligations hereunder, except with the written consent of the other Party, such consent not to be unreasonably withheld.

12.2 This Contract contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

12.3 Each Party acknowledges that, in entering into this Contract, it does not rely on any representation, warranty or other provision except as expressly provided in this Contract, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12.4 No failure or delay by either Party in exercising any of its rights under this Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

13. **Severance**

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

14. **Notices**

14.1 All notices under this Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

14.2 Notices shall be deemed to have been duly given:

- (a) when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- (b) when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
- (c) on the fifth Business Day following mailing, if mailed by national ordinary mail, postage prepaid; or
- (d) on the tenth Business Day following mailing, if mailed by airmail, postage prepaid.

14.3 In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

15. **Variation**

The Company reserves the right to make minor changes to these Conditions from time to time which changes shall automatically be incorporated into the Contract. Save for minor changes to these Conditions (and the Contract) no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16. **Law and Jurisdiction**

16.1 This Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

16.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.