



## Kommando (Digital) Terms and Conditions

### Your Agreement with Kommando

These Terms and Conditions should be read in conjunction with a completed Sales Order, in which you will find the service, pricing and other arrangements specific to your contract with Kommando. Signature of a Sales Order on behalf of both you and Kommando creates a legally binding contract made up of that Sales Order, Sales orders may be confirmed by a signed email, these Terms and Conditions and any schedules or appendices referred to in either document. For ease, that contract is referred to in these Terms and Conditions as the "Agreement".

### 2. Terminology

To make these Terms and Conditions easier to read, Kommando have given the following expressions a specific meaning, when used in this Agreement:

- **Agreement** - has the meaning given to that term in Clause 1.1;
- **Charges** - means the charges that you will pay to Kommando, as detailed in the Sales Order;
- **Customer Provided Content** - means all content or information (including, without limitation, any text, music, sound, photographs, video, graphics, data, or software), in any medium, provided by You to Kommando.
- **Initial Term** - means the initial term of this Agreement, as set out in the Sales Order;
- **Kommando** - (The Barn, Town foot Farm, Blantyre Ferme Road, Glasgow, G71 7RR (Co. No. SC234022)
- **Kommando Sales Order** - means a document bearing that heading which has been duly signed on behalf of both You and Kommando, containing service, pricing and other arrangements specific to Your contract with Kommando
- **Service** - means the services as described in the Sales Order;
- **SLA** - means the service level agreement attached as Schedule 1 to these Terms and Conditions, detailing the service levels that Kommando will aim to meet and any payments that Kommando will make to you if that standard of service is not met;
- **Start Date** - means the date that this Agreement comes into force, as stated in the Sales Order;
- **Terms and Conditions** - means these Website Design Terms and Conditions;

- **Third Party Services** - means services provided to you by any supplier other than Kommando or an Kommando agent;
- **You and Your** - means Kommando customer, being the person or entity that is identified in the Sales Order;
- **Your Representative** - means an individual or person nominated to act as your point of contact.

### 3. The Services that Kommando will provide

- **3.1** Kommando will provide the Services to you: **(i)** to a standard that meets or exceeds the SLA; **(ii)** using reasonable care and skill.

### 4. Our Commitments to one another

- **4.1** Authority to sign the Agreement. Each of us confirms to the other that we have the authority to enter into and meet our respective obligations under this Agreement.
- **4.2** Relevant licences. Kommando confirms that it owns or is licensed to use the systems, products, and materials necessary to provide the Services to you.

### 5. Charges and their payment

- **5.1** Set Up. When you sign this Agreement, Kommando will invoice you for the fees as listed in the Sales Order. Fees will be invoiced immediately after the signing of the Sales Order.
- **5.2** Hosting and Domain Registration fees will be payable immediately upon signature of the Sales Order
- **5.3** Recurring Service Charge. When you sign this Agreement, Kommando will also invoice you for the Recurring Service Charge listed in the Sales Order. That invoice will be payable within 30 days by direct debit. Following Kommando's initial invoice, Kommando will invoice you for each further instalment of the Recurring Service Charge monthly in advance, each further invoice being payable by direct debit.
- **5.4** Taxes. The Charges do not include applicable taxes (including VAT) or import/export duties or shipping and delivery charges. If any of those duties or charges are incurred, they will be added to any relevant invoice and will be payable by you or, if payable on a withholding tax basis, will be payable by you to the relevant authority direct.
- **5.5** Payment of invoices. Unless you dispute an invoice with good cause, you must pay each Kommando invoice in GBP (£) within 30 days of the date on which that invoice is issued or within such alternative period as is expressly stated in this Agreement (the "Due Date"). You will not be

entitled to deduct or off-set any amount that Kommando may owe to you against an Kommando invoice.

- **5.6 Suspension of Services for non-payment. If you do not pay an invoice:**
  - **5.6.1** within 7 days of the Due Date, Kommando will restrict your access to your website;
  - **5.6.2** within 14 days of the Due Date, Kommando will be entitled, at any time thereafter (until payment is made), to disable the website. If Kommando does disable the Service and you wish to have it re-enabled, Kommando will charge you a re-connection fee calculated in accordance with the Sales Order; and
  - **5.6.3** within 30 days of the Due Date, Kommando may end the Service permanently and charge you a de-installation charge calculated in accordance with the Sales Order. If Kommando end the Service in that way, you will still be responsible for your obligations under this Agreement, including the obligation to pay Charges.
  - **5.6.4** Kommando will give you at least 2 working days' written notice before taking any of the actions listed in this paragraph.
- **5.7** Interest charge. If you do not pay any invoice in full by the Due Date, Kommando will be entitled to charge you interest on the unpaid amount calculated at a rate of 2.5% per annum above the prevailing base rate of the Bank of England, that interest charge being applied until the outstanding amount is settled in full. Kommando's right to charge interest does not affect its right to take other legal action against you in relation to non-payment of the amount concerned.

## **6. Copyright**

- **6.1** Copyright is retained by Kommando on all design work including words, pictures, ideas, visuals and illustrations unless specifically released in writing or after all costs relating to the specific project have been settled. If a choice of design is presented, only one solution is deemed to be given by Kommando as fulfilling the contract. All other designs remain the property of Kommando, unless agreed in writing that this arrangement has been changed.

## **7. Website Design**

- **7.1** Once you have signed up for your website, you will be contacted within 24 hours to discuss your requirements in further detail. You will be sent a question and answer document to complete and return. This is essential for the design to start on your website. If you have purchased the Starter, Business or Premier website package, you will be provided with content templates. The content templates need to be completed in order for

your website to begin production. Once the templates have been received and checked you will then be allocated a designer.

- **7.2** If you have any queries or concerns regarding your quote for premium design services then it is your responsibility to contact us. If your quote does not include specific services or functionality then it is unlikely that it will be included as part of your package. Changes to your design, including adding, altering or swapping functionality are very likely to affect the overall budget for the design job and should be discussed with your account manager. If required, the account manager will update your quote to include the additional work.
- **7.3** Your website will begin production once you have provided all necessary materials. Kommando are unable to proceed with the build of your website until you supply images (unless Kommando are providing stock images), documentation and approval.
- **7.4** Kommando may, at their discretion, plan milestones into your website development. This may be necessary to ensure availability of resource across various design projects running concurrently. In the eventuality that Kommando plan milestones into your design project, it is your responsibility to ensure delivery of any materials, or instruction, required to Kommando in the correct format by the milestone dates. Failure to do so may result in your project slipping and losing its place in the global project plan. Kommando accept no responsibility for delays to the delivery of your completed project caused by failure to adhere to any milestones set.
- **7.5 Provision of Materials**
  - **7.5.1** Should you request Kommando to design your website using your own images and content, you acknowledge and agree that you are responsible for supplying Kommando with materials which do not infringe any copyright. Kommando will not be responsible for any copyright issues that may occur as a result of images supplied by you.
  - **7.5.2** You acknowledge that the volume or type of material submitted must be commercially realistic for Kommando to build the website within the defined scope of work. You accept that Kommando may, at their discretion, decline to perform the website development services if your expectation exceeds the scope of work as agreed with you when your order for the service was placed.
  - **7.5.3** Kommando may reproduce, as well as digitally manipulate the materials in the course of building your website and you confirm that Kommando are allowed to do so. Kommando reserve the right to reject any part of the material submitted, if it is deemed by Kommando to be unsuitable for inclusion within your website or if such materials violate any aspect of the Kommando Acceptable Use Policies.

- **7.5.4** With the exception of any Third-Party Materials, You own the Website and Customer Provided Content. You accept that Kommando will not be responsible for holding design material for more than one month from the date of completion of your website. You must write to Kommando on your company or business letterhead instructing how and when to return the design material along with a self-addressed postage paid envelope before the expiration of the one month period if you require the material to be returned.
- **7.5.5** Kommando will remind you, via email through the online contact system, to provide required information during the period of six months from the date of purchase. After six months, if Kommando have not received all information required, Kommando shall remove your website from the design servers and cancel the design project. No refund will be granted on the grounds that the website was not created due to material not being supplied by You.
- **7.5.6** The graphics utilised from the Kommando graphics library are licensed from third-party suppliers. Images and logos created by Kommando are wholly owned by Kommando and a release fee may apply on request for release. Unless a high resolution logo has been purchased, any logos will be created at 72Dpi (screen resolution). If you require a high resolution logo to be created from a screen resolution logo this can be arranged for an additional fee. Please contact your account manager for a quotation giving them details of your requirements.
- **7.5.7** "Third-Party Materials" means any content, software, or other computer programming material that is owned by an entity other than Kommando and licensed by Kommando or generally available to the public, including the customer, under published licensing terms and that Kommando will use in the development of, or to display or run, a website.
- **7.5.8** All written content must be provided by the customer. If a customer wishes Kommando to write additional content it can be discussed with your account manager. Kommando can quote for this service but offer no guarantees that they are able to provide suitable content on any particular subject matter. Content for text and images must be sent in digital format. Kommando cannot accept information via the post or photographs (unless on CDROM). Physical media (e.g. CD) will be retained by Kommando.
- **7.5.9** Any Images which are supplied / owned by the client will not be reproduced by Kommando for any other clients.
- **7.5.10** All creation files remain the intellectual property of Kommando.

- **7.5.11** Images that are required to complete the web design can be resized as agreed by the designer. Any photo editing required to pictures can be discussed with the designer. However, images cannot be graphically altered as part of the original quote. An updated quote for this additional service can be provided on request to your account manager.
- **7.5.12** Kommando will not be held responsible for the function and proper use of 3rd party hosting and domains. In the case where a website has been designed for use on a non-Kommando server it is the customer's responsibility to ensure that their host is working and the domain is fully resolving. This includes any database functionality. Kommando will not be held responsible for any delays incurred in transferring content to a 3rd party host. Kommando reserve the right to administer an additional charge for any delays occurred in transferring content to a 3rd party server. In some cases it will not be possible for Kommando to process the content transfer. In such a case it will be the responsibility of the customer to upload the content.
- **7.6 Build and Production**
  - **7.6.1** Once you have produced the content and articulated to Kommando the structure of your website, Kommando will produce a concept design based around your design brief. The design brief is basically you telling the designer what you want as indicated in the material gathering phase.
  - **7.6.2** The designer will create a sample idea for your approval. If you are happy with the general layout/colour scheme etc., Kommando shall progress with that design option and can make small changes to the design in 2 further review iterations of the design concept.
  - **7.6.3** In the unlikely event that the initial design concept does not meet your expectations, a second, different, design concept will be produced and sent to you for review. This process will be repeated a third time if necessary.
  - **7.6.4** After 3 design concepts have been produced for your project, further design changes will not be possible without additional charge and you must select which design concept you wish to progress with. The budget for your design job allows for up to 3 design concepts only.
  - **7.6.5** It is your responsibility to give constructive feedback on the design in order that Kommando can alter it to meet your expectations. Once the concept has been agreed the designer will begin the construction of your website.
  - **7.6.6** Should you decide that changes are required to what was originally quoted and agreed, Kommando will accept these changes on the basis that additional charges may have to be negotiated.

- **7.6.7** Once you agree to the Design concept and your job is moved to the build stage, further design changes will be very limited. If any requested changes are not able to be implemented within a reasonable time scale then an additional charge may apply. This charge is at the discretion of Kommando.
- **7.6.8** During the build process Kommando will provide training documentation on your website which will demonstrate the process that you would use to update your site content (If content management system is provided within your sales order). For ecommerce websites this will demonstrate the common actions that are necessary to operate an effective online shop. If further training is required, the training packages can be purchased as and when required in order for you to gain access to technical assistance from the design team.
- **7.7 Completion.**

When your website is complete it is almost ready to be published. It is important at this stage to let Kommando know that you are happy with your site. Kommando check all websites that they produce against their own internal checklist to ensure that each and every build is completed to the highest of standards.

- **7.7.1** When your website has been completed and signed off by the Design Team Manager Kommando will notify you via the online contact system. At this time you are required to respond within 7 days in order to verify when you would like your website to go live. Limited changes to text and images can still be made at this stage if required.
- **7.7.2** If you have not responded within 7 days, Kommando shall send a second reminder of your design being complete. A second 7 day period will then start, during which time it will only be possible to fix bugs with the website. Any requested content changes may incur further charge.
- **7.7.3** After the second 7 day period, if Kommando have not heard from you, they shall sign off your site and move it to a storage server for a period of up to six months. If you wish your site to be put live you can contact Kommando to do so within that period. A reactivation fee may apply in order to upload the site to the live server.
- **7.7.4** Failure to contact Kommando within a six month period after notification of your site being complete is likely to result in the site being deleted from the server. It is your responsibility to ensure you check your email, the design contact area and any junk mail folders to ensure you have received all correspondence from Kommando.

- **7.7.5** You are responsible for ensuring that your website and its content comply with standing regulations. Kommando are not responsible for any failure to comply with any selling, trade or business regulations.
- **7.7.6** Unless previously agreed Kommando are not responsible for your on-going website promotion unless you have previously purchased an on-going optimisation service from Kommando.
- **7.7.7** Kommando will not be held liable if your website address is not indexed in certain search engines.
- **7.7.8** In the unlikely event that Kommando are unable to reach sign off for your site and all attempts at mediation have failed, no refund will be issued where customer approval is unreasonably withheld.
- **7.7.9** Kommando recommends that you make or purchase a backup of your website. Kommando will not be held liable if a backup is not available to you. Kommando recommend you utilise the Kommando Cloud Hosting Platform to host your website as this platform includes a backup service that you can access and manage through your control panel.
- **7.7.10** When Kommando agree the sign-off of a content managed website, the website is then considered complete. If changes are made to the website after the agreed sign-off date, Kommando reserve the right to charge for any additional work required in order to rectify any mistakes that have been made by the customer.
- **7.7.11** When a website has been completed by Kommando and is live on the customer's domain it is the customer's responsibility to ensure that their packages are maintained sufficiently, including but not limited to Domains, Hosting and Servers. Kommando cannot be held responsible for any changes in server configurations including DNS, installed software or Control Panel settings unless a maintenance package has purchased as part of the web design package.
- **7.7.12** Where a website has been subject to a malicious attack, including but not limited to Denial Of Service, Hacking, and Viruses, Kommando will do its utmost to restore the latest backup copy of your website if available. However, Kommando will not be held responsible for loss of data in the case of such an attack. In particular, Kommando are not responsible for loss of edited content for a Content Management System website or ecommerce platform. Kommando can only restore the site to the conditions of the last available backup. Any changes made after the time of the last available backup will be lost.
- **7.7.13** Kommando have no responsibility for the backup of your own personal content added to the website after the launch date,

unless you have agreed and purchased an aftermarket backup package.

- **7.7.14** All coding created by Kommando is copyrighted and may be reproduced and altered for other clients.
- **7.7.15** Graphics/Images purchased by Kommando from third party companies are limited to a maximum of £20.
- **7.8 Contact with Kommando Design.**

The Kommando designers are based in the UK in the same offices as the Sales Team and Design Manager.

- **7.8.1** All contact with the design team should be made via the online contact system. This is the fastest and most reliable way to contact the design team and ensures that a reliable paper trail is kept of the discussions and direction given to the design team on your project. It also allows the Design Manager and any other designers who may be working on your website to see the responses and notes made by you.
- **7.8.2** Telephone enquiries, including those relating to design changes or pricing, should be made to your Account/Project Manager during working hours (9-5 Monday to Friday) if necessary.
- **7.8.3** Use of direct email contact may be made when you need to send large attachments or are unable to login to the online contact system. Your password for the online contact system is included in the emails that Kommando send to you. Your username is the email address that Kommando have sent the email to.
- **7.9 General Terms.**
  - **7.9.1** In order for Kommando to provide appropriate concept designs to meet your business needs, you must supply preferred sites, design and colour requirements in advance. This term also applies to High Resolution logo design.
  - **7.9.2** If you wish to cancel, you have a 48 hour (2 working days) cancellation period which takes effect from the date you purchased your premium design service. You should contact Kommando on 0370 755 5088 within this time period. Your service will be cancelled and all monies returned with the exception of a £250 administration charge to cover costs incurred up to that point. Should your package include a web submit package in addition to the cost of the design package there will an additional maximum £50 administration/outsourced overhead charge.
  - **7.9.3** Phone calls may be recorded to ensure accurate information is gathered. These phone calls may be also used for training purposes.

- **7.9.4** A non-refundable deposit of £250 or 70% (whichever is lower) is required for each website build that Kommando undertake. This deposit is included as part of the quote provided to you.
- **7.9.5** If, during the website build process, Kommando have been unable to make contact with you and you have not made reasonable contact with us, for a period of 3 months, your job will be suspended and an admin fee of £99+vat will be charged to reinstate your job. This fee is charged for the management of placing your job within current assigned projects and reordering these projects to ensure that there is no disruption and time delays to other customers. In the event that Kommando have been unable to make contact with you and you have not made reasonable contact with Kommando for a period of 6 months or more, your job will be removed from the suspended jobs list and no refunds will be available.
- **7.9.6** When your website has been uploaded to your live server it is important that you ensure that all payment details are correct and functioning properly. Kommando will not be held responsible for any errors in your payment or account information. However, Kommando will make efforts to assist you with any difficulties you encounter.

## **8. Alterations & Updates**

- **8.1** You agree that changes required over and above the estimated work or required to be carried out after acceptance of the draft design will be liable to a separate charge.
- **8.2** You also agree that Kommando holds no responsibility for any amendments made by any third party, before or after a design is published.
- **8.3** Kommando will endeavour to repair or patch any bugs that exist in your website source code that were introduced at the time of the website build or as a result of any previous patching by Kommando. Kommando will not repair or patch any coding issues that were introduced as a result of 3rd party intervention. Bug management does not include any design changes unless this is required to remedy any source code bugs. Note that Kommando are not responsible for fixing bugs in any 3rd party software used on the website including open source code.
- **8.4** A software bug is the common term used to describe an error, flaw, mistake, failure, or fault in a computer program or system that produces an incorrect or unexpected result, or causes it to behave in unintended ways.
- **8.5** Kommando will update or patch your web site whenever a security issue arises. This update will often be transparent and will not change how your website functions. If the situation arises that more substantial changes

to your website are required Kommando will contact you to discuss further amendments.

- **8.6** Security updates do not include updating your website software to the latest available release unless this is required to patch a serious security issue.

## **9. Maintenance & Support**

- **9.1** The design and site maintenance package provides for up to 2 hours each month of website changes. This allows you to make changes to your website that would normally take Kommando up to 2 hours to implement. Larger or more substantial changes may incur an additional charge in order to implement.
- **9.2** Kommando will discuss time requirements for updates when requests are made. Kommando will not go out-with the agreed 2 hours without prior consultation with you.
- **9.3** The monthly maintenance packages includes management time for reading of messages to Kommando - it is in your interest to ensure that emails are complete and are clear to allow the designer to focus time on the implementation of changes.
- **9.4** Kommando provide full written, online guides for explanations of how to use the content management system or ecommerce platform (if applicable) of your website. If you require additional help with these areas, a support charge will be applicable from the web development team. The Easy Assistant package is available to purchase which can be used to access the knowledge base of the web design team as and when required. Alternatively, your account manager will have given you details of monthly management and support packages that are available to you in your original proposal document. For more information, please contact your account manager.

## **10. Publicity of Website**

- **10.1** You agree to allow Kommando to place websites and other designs, along with a link to your site on Kommando's own website for demonstration purposes and to use any designs for their own publicity.

## **11. Rights of Access for Website Construction**

- **11.1** You agree to allow Kommando all necessary access to computer systems and other locations, as required, in order to complete a website project and until all due funds are cleared, including the necessary read/write permissions, usernames and passwords. You also agree to allow Kommando access to any computer systems, usernames and passwords

required to remove data and/or sites for failure to comply with these Terms and Conditions.

## **12. Design Project Duration**

- **12.1** Any indication given by Kommando of a design project's duration is to be considered by you to be as an estimation. Kommando cannot be held responsible for any project over-runs, whatever the cause. Estimated project duration should be deemed to be from the date that cleared funds are received by Kommando for the initial payment or by date confirmed in writing by Kommando.

## **13. Search Engine Optimisation**

- **13.1** Not all websites have the same ability to be tuned for web promotion purposes. Extensive use of flash, frames or active content all have an effect on a website's ability to achieve a high ranking on search engines.
- **13.2** If the you modify the website without prior agreement with Kommando then Kommando cannot take responsibility for the performance of the rankings.
- **13.3** Due to the infinite number of considerations that search engines uses when determining a site's ranking, Kommando cannot guarantee any particular placement within search engine results. Acceptance by any search engine cannot be guaranteed and when a site is accepted, the time it takes to appear in search results varies from one search engine to another. Rankings will also vary as new sites competing for the same keywords are added.

## **14. Third Party Claims**

- **14.1** You shall indemnify Kommando and keep Kommando indemnified and hold Kommando harmless from and against any breach by you of these terms of business and any claim brought against Kommando by a third party resulting from the provision of Services by Kommando to you and your use of the Services and the Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by Kommando in consequences of your breach or non-observance of this Agreement.

## **15. Limits of Liability**

- **15.1** All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms

and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject always to subclause 19.2.

- **15.2** Nothing in these terms and conditions shall exclude liability for death or personal injury resulting from negligence.
- **15.3** Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim.
- **15.4** In any event no claim shall be brought unless you have notified Kommando of the claim within one year of it arising.
- **15.5** In no event shall Kommando be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

## **16. Rights of Refusal**

- **16.1** Kommando will not include in its designs, any text, images or other data which it deems to be immoral, offensive, obscene or illegal. All advertising material must conform to all standards laid down by all relevant advertising standards authorities.

## **17. Terminating the Agreement**

- **17.1** Terminating the Agreement on notice. Either you or Kommando can end the Agreement by giving the other party at least 90 days' written notice in advance of the end of the Initial Term or any subsequent Renewal Term. Alternatively, you can end the Agreement on 90 days' written notice to Kommando if you cannot agree to an:
  - **17.3** increase in the Charges imposed under paragraph 17.1,
  - **17.4** although you must serve that notice no later than 30 days after the increase in Charges is notified to you. After expiry of that 30 day period, the change or increase that was notified to you will be deemed to have been agreed.
- **17.5** Terminating the Agreement following a breach. Either of us may end this Agreement if the other materially breaches its obligations and does not fix that breach within 30 days after receipt of written notice from the other party.
- **17.6** Kommando's specific rights to end the Agreement. Kommando may end this Agreement within 14 days after giving you written notice (or immediately on giving you written notice where Kommando is required by law), where:
  - **17.6.1** if you are a company, you present a petition or have a petition presented by a creditor for your winding up, or convene a

meeting to pass a resolution for voluntary winding-up, or the making of an administration order, or enter into any liquidations (other than for the purpose of a bona fide reconstruction or amalgamation); call a meeting of your creditors or have a receiver, administrator, administrative receiver, liquidator or any other similar officer or insolvency practitioner appointed in respect of all or any of your undertakings or assets, or are deemed by applicable law to be unable to pay your debts; or

- **17.6.2** if you are an individual, you die, or, if you are a firm or partnership, are dissolved or in any case, commit any act of bankruptcy or have a receiving order made against you or make or negotiate for any compensation or arrangement with or assignment for the benefit of your creditor.
- **17.7** Continuing liability. However this Agreement ends, each of us will still be responsible for claims or liability (including payments due) relating to the time before the Agreement ended.
- **17.8** The position after the Agreement ends. When this Agreement ends: (a) Kommando will immediately stop providing the Service; (b) payments due by you under this Agreement will be payable immediately, including any unpaid Charges due for the remainder of the Initial Term or any Renewal Term (except where the Agreement has ended for Kommando's material breach under paragraph 8.3); (c) within 30 days after this Agreement ends, each of us will return all Confidential Information of the other in its possession at the time this Agreement ends and will not make or keep any copies of that Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.

## **18. Protection of Confidential Information**

- **18.1** Information concerned. Each of us acknowledges that we will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, including the terms and conditions of this Agreement, proprietary software and customer information ("Confidential Information").
- **18.2** Maintaining secrecy. Each of us agrees that except as expressly permitted under this Agreement, we will not use in any way, for our own account or the account of any third party, nor disclose to any third party, except as required by law or as reasonably necessary to that party's professional advisors (or in Kommando's case, to the other operators of Kommando's global network), any of the other party's Confidential Information and that we will each take reasonable precautions to protect the confidentiality of that information.

- **18.3 Exceptions.** Information will not be deemed Confidential Information if that information: **(i)** was already known or becomes known to the receiving party from a source other than the disclosing party; **(ii)** becomes publicly known or becomes no longer secret or confidential, except through a breach of this Agreement by the receiving party; **(iii)** is independently developed by the receiving party; or **(iv)** is required to be released by law or regulation, provided that the receiving party promptly informs the disclosing party in writing of the impending release, and the releasing party co-operates fully with the disclosing party to minimise the extent of the release.

## **19. General Provisions**

- **19.1 Unenforceable Provisions.** If any part of this Agreement is found by a court or other competent authority to be illegal or unenforceable then the rest of this Agreement will remain valid.
- **19.2 Circumstances outside either party's control.** Except for the obligation to pay money, neither you nor Kommando will be liable for any failure or delay in meeting our respective obligations under this Agreement, or for credits due under the SLA, due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, terrorist activity, sabotage, labour shortage or dispute, governmental act or failure of the Internet, provided that whichever of us is affected: **(a)** gives the other prompt notice of the situation; and **(b)** uses reasonable commercial efforts to correct promptly the failure or delay in performance.
- **19.3 Transfer of rights.** You may not assign or transfer your rights or subcontract your obligations under this Agreement either in whole or in part without Kommando's prior written consent. Kommando will not unreasonably refuse that consent.
- **19.4 Notices.** Any notice given under this Agreement must be in writing and may be delivered personally, deposited with an overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the relevant address indicated above, or such other address as either of us may nominate in writing. That notice will be deemed to have been given on the date delivered, or 5 days after mailed or sent, whichever is earlier.
- **19.5 Status of the parties.** Kommando and you are independent contractors and this Agreement does not create any partnership, joint venture or agency or employee relationship. Neither of us has authority to enter into any contract on behalf of the other.
- **19.6 Changes to the Agreement.** This Agreement may only be amended if both of us agree in writing.
- **19.7 Dispute resolution.** If a dispute arises between you and Kommando relating to this Agreement you and Kommando will use reasonable

commercial efforts to resolve the dispute at senior management level within 28 days of the dispute arising, failing which:

- **19.7.1** you and Kommando agree that, within 14 days of the failure to resolve the dispute, either of us may pass the dispute to an Alternative Dispute Resolution ("ADR") procedure officer of the Centre for Dispute Resolution (CEDR) as adopted by a suitable qualified mediator in London, England appointed by the senior executive officer of CEDR. Each of us will meet our own costs in those proceedings unless we agree otherwise as part of any settlement. If the dispute has not been resolved within a further 28 days or if either of us refuses or ceases to participate in an ADR procedure, or you and Kommando cannot agree on an ADR procedure within 14 days of the failure to resolve the dispute, either of us may refer the dispute to the English Courts; and
- **19.7.2** nothing in this paragraph prevents either of us from going to court to seek a preliminary injunction or other order at any time if either of us thinks that such an action is necessary.
- **19.8** Delay in exercising rights. If either of us does not exercise a right which we have under this Agreement or at law, or if either of us delays in exercising that right, we will not be prevented from exercising that right at a later date.
- **19.9** Documents making up this Agreement. A Sales Order and these Terms and Conditions, together with any schedules or appendices referred to in either document, make up the complete agreement and understanding between us in relation to the Services and replace any other agreement or understanding between us, written or oral. If a conflict is identified between the Sales Order and these Terms and Conditions, the Sales Order will take precedence.
- **19.10** Status of headings. Headings have been included for convenience only and will not be used in constructing any provisions of this Agreement.
- **19.11** Interpretation. Any references in this Agreement to the words in the singular include the plural and vice versa. Where the words "includes" or "including" are used, the words that follow are examples only.
- **19.12** Governing law. This Agreement and any claims arising out of it or in connection with it (including non-contractual claims) will be governed by English law and both of us agree that the English Courts will have non-exclusive jurisdiction.

## **Schedule 1 - Service Level Agreement**

### **1. Service Levels**

- **1.1 Service Level.** Kommando agrees that it will use all commercially reasonable endeavours to make Your website available, avoid power and

network downtime, and provide the level of support and professional services described in this Agreement. Kommando will provide compensation to the Customer on the basis set out in this Service Level Agreement ("SLA") where it has failed to meet this criterion.

- **1.2 Period.** Where the Customer enters into an SLA, Kommando shall guarantee the level of service set out in the SLA in a 30 day period.

I hereby agree to these conditions (Client)

Name\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

Kommando

Name

Signature

Date