

HIGH POSITION TERMS AND CONDITIONS (please also refer to your Term Sheet and Schedule) High Position reserves the right to amend these T&C's without notice. Up to date versions of these T&Cs will be published upon our website www.highposition.com.

1 Definitions

1.1 The words and phrases defined in bold on the Term Sheet and below will bear those meanings when used in this Agreement and its Schedule:

Client	The company indicated upon Term Sheet who will receive the agreed services.
"Agreement" "Project Contract"	This agreement and any attached Schedules or 'Project Contracts'. Any additional work outside of the scope of this Agreement agreed by both parties
"Content"	data or other material available via the Services or generated by the Services
"Client Content"	the data or other material supplied by Client for utilisation in the Services
"Keyword"	the text of a Search Query
"Search Query"	The entry of text into a search box which initiates the search
Term	The period specified in Term Sheet of this Agreement

2 Services

- 2.1 Client engages High Position and High Position agree to provide the Services from the Implementation Date until the end of the Term in accordance with the terms of this Agreement or any subsequent Project Contract.
- 2.2 Unless otherwise specified in this Agreement or any subsequent Project Contract, the Services are provided and may be used solely by Client for management of its web assets on internet search engines.
- 2.3 Client will provide High Position clear instructions and will make available to High Position all relevant information required for its performance of the Services. If Client requests High Position to change or cancel any part of the requested Services, High Position will take all reasonable steps to comply with any such request (subject to charging for any additional cost incurred) provided that it is able to do so within its contractual obligations to Search Providers.

3 Warranties

- 3.1 Each party warrants and represents to the other that it shall exercise its rights and perform its obligations under this Agreement and any subsequent Project Contract in all respects in accordance with all and any applicable legal and regulatory requirements (including without limitation the Data Protection Act 1998).
- 3.2 High Position warrants and represents to Client that it:
- 3.2.1 Shall provide the Services with all reasonable care and skill, and to a professional standard throughout;
- 3.2.2 Has the right to provide the Services and that the Services will operate to provide the facilities and functions implemented by High Position; and
- 3.2.3 Has in place and undertakes to maintain throughout the Term appropriate technical and organisational measures against the accidental, unauthorised or unlawful processing, destruction, loss, damage or disclosure of any personal data.
- 3.3 Client warrants that to the best of its knowledge information and belief all information supplied to High Position in relation to its supply of the Services will be accurate and in accordance with all applicable laws.
- 3.4 Save as provided in this Agreement or any subsequent Project Contract, neither party makes any representations and gives no other warranty, condition or undertaking either express or implied to the fullest extent permitted by law. In particular, although High Position will provide the Services in good faith, no warranty is made regarding the results of usage of the Services or that the Services functionality will meet Client requirements or that the Services will operate uninterrupted or error free.

3.5 Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

4 Payment

- 4.1 High Position shall invoice Client based on agreed management for each calendar month. If any invoices are not paid when due, High Position may suspend the Services and/or charge Client interest on the outstanding amounts at the rate of 1% above the base rate of the Bank of England from time to time in force or such other rate as may be permitted under the Late Payment of Commercial Debts (Interest) Act 1998 from time to time. Payment terms are specified on your Term Sheet and will be strictly adhered to from the date of invoice.
- 4.2 All sums or other consideration in this Agreement or any subsequent Project Contract are exclusive of value added tax which is (where properly chargeable) to be added to the relevant sum or other consideration and be paid by the relevant party to whom the supply is made.
- 4.3 Client shall pay travel and accommodation expenses for High Position and other representatives who perform on-site work including but not limited to the attendance of meetings within Client company locations, if requested by the Client and agreed by Client in writing beforehand.
- 4.4 For the duration of the term, upon each yearly anniversary High Position reserves the right to apply an inflation related increase to the monthly fee that is in force at the time. If invoked by High Position, Client will receive notification of the new fee via the penultimate invoice prior to the year's anniversary.

5 Intellectual Property

- 5.1 Except as set out in clause 5.3, all and any intellectual property rights subsisting in the Services and the software and program code used to provide the Services (and any content derived from use of the Services) shall be the property of High Position.
- 5.2 Upon termination of this SLA, all information relating to 'off page' services provided by High Position shall remain the property of High Position. For the avoidance of doubt therefore, this clause covers High Position's knowledge, expertise and linking service relationships. It does not encompass any links that have been achieved as a result of the services provided, which will remain in situ upon termination as per the normal conventions on linking and the natural link obsolescence that may apply.
- 5.3 All and any intellectual property rights subsisting in Client Content shall remain the property of Client High Position shall use Client's Content solely for the purpose of providing the Services (including for the avoidance of doubt auditing the Fees payable).
- 5.4 High Position shall indemnify and hold Client harmless from any losses, liabilities, demands, claims, costs and expenses arising directly as a result of or in connection with any claim that the Services infringe any intellectual property rights of any third party provided that Client:
- 5.4.1 Notifies High Position promptly upon becoming aware of any matter or claim to which the indemnity relates;
- 5.4.2 Does not make any admission or settlement in respect of such matter or claim without High Position's prior consent; and
- 5.4.3 allows High Position, where appropriate, to appoint legal advisers of High Position's choice and to conduct and/or settle negotiations and/or proceedings relating to such matter or claim or (where it is not appropriate for High Position to have conduct of such negotiations and/or proceedings) Client shall comply with High Position's reasonable requests in the conduct of any such negotiations and/or proceedings.
- 5.5 The indemnity in clause 5.4 shall not apply if and to the extent that the relevant losses, costs, damages, liabilities and/or expenses are due to breach by Client of any of its obligations under this Agreement.

6 Confidentiality

- 6.1 Each party undertakes to use all documents and all technical, commercial, financial and other information obtained from the other party in connection with this Agreement or any subsequent Project Contract, or with the negotiations leading up to it, solely for the purpose of performing this Agreement or any subsequent Project Contract, to treat them confidentially and to make them

- available or disclose them to third parties only so far as it is necessary for the performance of this Agreement or any subsequent Project Contract. Further, each party undertakes not to disclose to any person, without the previous written consent of the other party, the existence of any term of this Agreement or any subsequent Project Contract, or the existence of any information about any dispute or disagreement between the parties.
- 6.2 The obligations of confidentiality set out above shall not apply to any documents or information which a party can show:
- 6.2.1 At the time of its acquisition was in, or at a later date has come into, the public domain, other than following a breach of this clause 6;
- 6.2.2 It knew prior to first disclosure to it by the other party; or
- 6.2.3 It received such information independently from a third party with the full right to disclose.
- 6.3 The obligations of confidentiality set out above shall remain in effect after the termination of this Agreement or any subsequent Project Contract and the parties shall impose corresponding obligations on their employees involved in the performance of this Agreement or any subsequent Project Contract for a period of one year.
- 7 **Publicity**
- 7.1 High Position retains the right to issue any press release and public announcements regarding work completed on behalf of Client with regard to results and improvements directly attributable to High Position's work.
- 7.2 All press releases and public announcements (including separate press releases that may be prepared by High Position and Client) regarding the effect of services delivered by High Position shall be provided to Client and subject to their authorisation prior to their release by High Position. High Position acknowledges that Client's authorisation is at their discretion and may be withheld in which case High Position will not release the content in question.
- 8 **Limitation of Liability**
- 8.1 The liability of High Position in respect of any claim for breach of contract, negligence, breach of statutory duty or otherwise shall be limited as follows:
- 8.1.1 In respect of any claim for personal injury or death caused by negligence, no limit shall apply; and
- 8.1.2 In respect of any other claim, liability shall be limited to the actual amount earned under the terms of this Agreement by High Position, during the Term of the Agreement.
- 9 **Term and Termination**
- 9.1 This Agreement will commence on the "Effective Date" specified within the Term Sheet, subject to signature and continues for the initial period or fixed term specified within the Term Sheet ("Initial Term" or "Fixed Term"). The Agreement will continue in force unless otherwise terminated by either party in accordance with Clause 9.2 or by giving thirty (30) days written notice to High Position/ Client at any time after the initial term with the intent to terminate due to business reasons or convenience. In the case of a *fixed* term, termination by Client for reasons of convenience is *not* permissible under this Agreement.
- 9.2 Either party may terminate this Agreement or any subsequent Project Contract immediately by giving written notice to the other in any of the following events:
- 9.2.1 if the other party commits any material breach of any of the terms and conditions of this Agreement and fails to remedy that breach (if capable of remedy) within 30 days after notice from the other party giving full particulars of breach and requiring it to be remedied; or
- 9.2.2 if the other enters into liquidation whether compulsory or voluntary (except for the purposes of bona fide reconstruction or amalgamation with the prior approval of the other party), or compounds with or makes any arrangements with its creditors or makes a general assignment for the benefit of its creditors, or if it has a receiver, manager, administrative receiver or administrator appointed over the whole or substantially the whole of its undertaking or assets, or if it ceases or threatens to cease to carry on its business, or if it suffers any analogous process under any foreign law.
- 9.3 High Position may suspend Client access to the Service in the event that it reasonably considers Client to be in breach of clauses 2, 3, 4 or 6 of this Agreement.
- 9.4 The provisions of clauses 1, 5, 6, 7 and 9 shall survive termination of this Agreement or any subsequent Project Contract.

10 **General**

- 10.1 No amendment or other variation to this Agreement or subsequent Project Contract shall be effective unless it is in writing and is signed by or on behalf of both parties.
- 10.2 Nothing in this Agreement confers any rights on any person (other than the parties hereto) pursuant to the Contract (Rights of Third Parties) Act 1999.
- 10.3 Failure or delay by either party to exercise any right or remedy under this Agreement does not constitute a waiver or bar to exercise of that right or remedy. No waiver by either party of any requirements of this Agreement or any subsequent Project Contract, or of any remedy or right under this Agreement or any subsequent Project Contract shall have effect unless given in writing, signed by that party. No waiver of any particular breach of the provisions of this Agreement or any subsequent Project Contract shall operate as a waiver of any repetition of such breach.
- 10.4 The terms and conditions of this Agreement or any subsequent Project Contract represent the entire agreement between the parties relating to its subject matter.
- 10.5 This Agreement or any subsequent Project Contract may not be assigned or transferred to another party who is not part of this Agreement without the prior written consent of the other party.
- 10.6 During the period of the provision of any products and services and for a period of one year after the Client or High Position will not directly or indirectly, solicit or induce away from the other party, employ or sub-contract, any employee or sub-contractor of the other party who has been involved in work to which this Agreement relates. Should either party to this Agreement directly or indirectly solicit or induce away from the other, employ or sub-contract any employee or sub-contractor of the other who has been involved in work to which this Agreement relates then a charge equivalent to one year's salary for that employee or sub-contractor, will be levied on the other. The resulting invoice will be due 30 days after the date of said invoice.
- 10.7 A party will not be liable for any failure or delay in performing its obligations under this Agreement or any subsequent Project Contract to the extent that this failure or delay is the result of any cause or circumstance beyond the reasonable control of that party and that failure could not have been prevented or overcome by that party acting reasonably and prudently. If by reason of force majeure a party is unable to perform all or any part of its obligations under this Agreement or any subsequent Project Contract for a continuous period of 20 working days, the other party may terminate this Agreement or any subsequent Project Contract immediately by written notice.
- 10.8 Any notice under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by first class post to the address of the parties as shown on the Term Sheet or such other address as the parties may notify in writing from time to time. In the absence of evidence of earlier receipt, any properly addressed notice shall be deemed to have been duly given:
- 10.8.1 if delivered by hand, on delivery;
- 10.8.2 if sent by first class post, two working days after posting.
- 10.9 This Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English Courts.
- 10.10 Any translation supplied with this document is for information purposes only and does not form part of this Agreement or override any clauses or terms in this Agreement.
- 10.11 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement
- 10.12 High Position retains the right to directly or indirectly sub-contract, assign, transfer, or otherwise arrange for any other person to perform any obligations or exercise or obtain any benefits associated with this Agreement or Project contract(s). Any sub-contract of High Position's obligations approved in writing under this Agreement is without prejudice to and shall not relieve High Position of its obligations to Client under this Agreement. High Position remains fully responsible for the acts, defaults, neglect or omissions of any subcontractors, its employees, agents or servants, as if they were the acts, defaults, neglect or omissions of High Position. High Position shall procure that subcontractors comply fully with the terms and conditions of this Agreement and Project contract(s) applicable to the obligations and works conducted or to be conducted hereunder by subcontractor