

Terms and conditions

These terms and conditions apply in respect of all work undertaken by **Prevolution Digital Ltd.**

Version 1.5 15th Jul 2019

1. Interpretation

1.1. The definitions and interpretation set out in this condition 1 apply to the Contract:

1.1.1. Contract: the agreement made between Prevolution Digital and the Client as set out in these Conditions;

1.1.2. Client: the person, firm or company referred to in the proposal and or scope of works who purchases Services;

1.1.3. Client Material: all Documents, information and materials provided by the Client relating to the Services including (without limitation), computer programs, information, materials, copy, data, reports, and specifications;

1.1.4. Prevolution Digital: Prevolution Digital Ltd, a company incorporated in England and Wales with company number 10593221 and whose official office is at Breck Farm Breck Farm Lane, Taverham, Norwich, England, NR8 6HL

1.1.5. Deliverables: all Documents, products, digital content and/or materials in any form, including computer programs, data, reports, and specifications (developed by Prevolution Digital or its agents or subcontractors) and delivered in relation to the Services;

1.1.6. Digital Marketing Services: The Services as further described at condition 9 below;

1.1.7. Document: includes, without limitation, in addition to any document in writing, any drawing, plan, diagram, design, picture or other image, proof, disk or other device or record embodying information in any form;

1.1.8. Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

1.1.9. Pre-existing Materials: all Documents, information and materials provided by Prevolution Digital relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports, and specifications;

1.1.10. Proposal or scope of works: The cost for services provided by Prevolution Digital to the Client;

1.1.11. Services: the services provided by Prevolution Digital under the Contract as set out in the Proposal or scope of works, together with any other services which Prevolution Digital provides, or agrees to provide, to the Client;

1.2. These Conditions shall prevail over any Client terms of business offered by or on behalf of the Client, or implied by law, trade custom, practice, or course of dealing. The Client's standard terms and conditions (if any) shall be deemed to be expressly rejected by Prevolution Digital.

2. Formation of the Contract

2.1. The acceptance of a Proposal or scope of works for services by Prevolution Digital constitutes an offer by the Client to purchase the Services specified in it on these Conditions. The Client will be deemed to have accepted a Proposal or scope of works when it either signs the Proposal or scope of works or otherwise communicates to Prevolution Digital that it has accepted the Proposal or scope of works. The Contract is deemed to commence on the earlier of:

2.1.1. a written acknowledgement issued and executed by Prevolution Digital; or

2.1.2. by Prevolution Digital starting to provide the Services.

2.2. Any Proposal or scope of works is valid for a period of twenty-eight (28) days from its date, provided that Prevolution Digital has not previously withdrawn it in writing.

The Client acknowledges that it enters into the Contract in the course of its business and not as a consumer.

3. Commencement of the Services

3.1. The Services shall be provided by Prevolution Digital to the Client from the date agreed by the parties or if earlier the date referred to at condition 2.1.2.

4. Prevolution Digital's Obligations

4.1. Prevolution Digital shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Client, in accordance with the Proposal or scope of works.

4.2. Prevolution Digital shall use reasonable endeavours to meet any performance dates specified in the Proposal or scope of works, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3. Prevolution Digital take no responsibility for the consequences of loss of data by third party services or providers.

4.4. Prevolution Digital take no responsibility for the consequences of change of emphasis or applicability of any of the services provided by Google.

5 Client's Obligations

5.1. The Client shall:

5.1.1. Co-operate with Prevolution Digital in all matters relating to the Services;

5.1.2. Provide to Prevolution Digital, in a timely manner, such Client Material and other information as Prevolution Digital may reasonably require and ensure that such information is accurate in all material respects;

5.1.3. ensure that the Client owns all Client Material, or, if not, ensure that the Client has permission from the legal owner to enable Prevolution Digital to legitimately use the Client material in the provision of the Services;

5.2. The Client acknowledges that the late supply of Client Material may have an impact on Prevolution Digital's ability to deliver the Services. If Prevolution Digital's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, Prevolution Digital shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

5.3. The Client shall indemnify Prevolution Digital, from and against, all costs, charges or losses sustained or incurred by Prevolution Digital arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to Prevolution Digital confirming such costs, charges, and losses to the Client in writing.

5.4. The Client shall indemnify Prevolution Digital against all losses, costs, or charges it may incur arising as a result of any action, claim, or threatened claim (as applicable) that Prevolution Digital's use of the Client Material in accordance with the Contract constitutes an infringement of the intellectual property rights of a third party.

5.5. The Client shall not, without the prior written consent of Prevolution Digital, at any time from the date of the Contract to the expiry of 6 (six) months after the last date of supply of the Services, solicit or entice away from Prevolution Digital or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant, or subcontractor of Prevolution Digital in the provision of the Services.

5.6. Any consent given by Prevolution Digital in accordance with condition 5.5 shall be subject to the Client paying to Prevolution Digital a sum equivalent to 20% (twenty percent) of the then current annual remuneration of Prevolution Digital's employee, consultant, or subcontractor or, if higher, twenty percent (20%) of the annual remuneration to be paid by the Client to that employee, consultant, or subcontractor.

6. Charges and Payment

6.1. In consideration of the provision of the Services by Prevolution Digital, the Client shall pay the charges as set out in the Proposal or scope of works.

6.2. Unless otherwise agreed in writing by Prevolution Digital and subject to condition 7.2 (where applicable), fifty percent (50%) of the total price for the Services including vat must be paid to Prevolution Digital prior to Prevolution Digital commencing the Services and fifty percent (50%) of the total charges shall be paid by the Client to Prevolution Digital (without deduction or set-off) upon delivery following completion of the Services.

6.3. All invoices are payable upon receipt of the invoice by the Client as payments dictate progression of the project at specific milestones. If invoices are not paid with immediate effect, Prevolution Digital has the right to stop working on the project until payment is made. Any other payment terms agreed between the Client and Prevolution Digital must be confirmed in writing by Prevolution Digital.

- 6.4. All charges quoted to the Client shall be exclusive of VAT, which Prevolution Digital shall add to its invoices at the appropriate rate;
- 6.5. Unless otherwise stated in writing any price and daily rate contained in the Proposal or scope of works excludes:
- 6.5.1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred in connection with the Services, and the cost of any materials or disbursements. Such expenses, materials or disbursements shall be invoiced to the Client at cost; and
- 6.5.2. VAT, which Prevolution Digital shall add to its invoices at the appropriate rate.
- 6.6. All additional work requested by the Client, which is requested following commencement of the Services and which is outside the scope of the Proposal or scope of works (including any services necessarily procured to carry out the Services) shall be regarded as additional to the cost given in the Proposal or scope of works and will be invoiced separately at the rates contained in the then current Prevolution Digital rate card.
- 6.7. All charges listed in Proposal or scope of works are estimates and are subject to final confirmation of technical specification.
- 6.8. The Client shall be entitled to request up to two (2) textual or photographic image amendments to the design work/artwork supplied for approval. Any amendments requested by the Client in addition to the two (2) permitted amendments will be deemed to be additional work and will be charged at Prevolution Digital's standard hourly fee rates.
- 6.9. If the Client believes that the design work does not conform to the description, then it shall notify Prevolution Digital within three (3) working days of receiving the same. If no notification is received then the design work shall be deemed accepted and to conform to the description of the Services in every respect. For the purposes of this condition 6.9 Prevolution Digital's liability for defects in the Deliverables shall be limited to the replacement of the Deliverables at no additional cost to the Client. Provided always that such defect is notified to Prevolution Digital in accordance with this condition 6.90 and the Deliverables have been returned to Prevolution Digital for inspection.
- 6.10. Once the Client has approved the Deliverables all further design work requested by the Client will be charged in accordance with the current rate card of Prevolution Digital.
- 6.11. The parties agree that Prevolution Digital may review and increase its standard hourly fee rates at any time, provided that such charges cannot be increased more than once in any 12 (twelve) month period. Prevolution Digital will provide the Client with written notice of any such increase one (1) calendar month before the proposed date of the increase. If such increase is not acceptable to the Client, it may, within two (2) weeks of such notice being received or deemed to have been received in accordance with this condition 6.11, terminate the Contract by giving three (3) months written notice to Prevolution Digital.
- 6.12. Without prejudice to any other right or remedy that it may have, if the Client fails to pay Prevolution Digital on the Due Date, Prevolution Digital may:
- 6.12.1. charge interest on such sum under the Late Payment of Commercial Debts (Interest) Act 1998; from the Due Date, accruing daily and being compounded quarterly until payment is made, whether before or after any judgment and the Client shall pay the interest immediately on demand; and
- 6.12.2. suspend all Services until payment has been made in full.
- 6.13. Time for payment shall be of the essence of the Contract.
- 6.14. All sums payable to Prevolution Digital under the Contract shall become due immediately on its termination. This condition 6.14 is without prejudice to any right to claim for interest.
- 6.15. Prevolution Digital may, without prejudice to any other rights it may have, set off any liability of the Client to Prevolution Digital against any liability of Prevolution Digital to the Client.

7. Website Design and Development

- 7.1. Where requested by the Client, Prevolution Digital will design and build a website or develop the Client's website based on the brief agreed between the Client and Prevolution Digital.
- 7.2. Payment for the Services shall be made in accordance with condition 6 above. The balance of Prevolution Digital's charges must be paid prior to the website going live. If any charges are not paid on or before the date for payment, Prevolution Digital may suspend the provision of the Services and Prevolution Digital will not upload the website to the Client's server or supply the website files to the Client for use on any third-party hosting server.
- 7.3. Once Prevolution Digital has been paid in full for its website design and development services, Prevolution Digital will provide a version of the Client's website to the Client

for the Client's review and approval. If the Client believes that the website design and/or development does not conform to the brief, then it shall notify Prevolution Digital within 3 (three) working days of receiving the version of the website. If no notification is received within 3 (three) working days of receiving the final version of the website then the website shall be deemed accepted and to conform to the description of the Services in every respect. Once approval has been given by any means, which can include by email or verbally, Prevolution Digital will release the website to the Client. On approval, Prevolution Digital will have no liability for any errors or downtime due to changes being made to the website by the Client or any third parties.

7.4. Prevolution Digital reserves the right to refuse to handle any material that it considers to be offensive, illegal, or controversial.

7.5. Unless agreed otherwise, the Client agrees that Prevolution Digital shall be free to use any ideas, concepts, know how or techniques used in the construction of the Client's website for any purpose whatsoever, including, but not limited to, developing, manufacturing, and marketing products and other items incorporating such information.

8. Website Hosting and Maintenance Services

8.1. Where requested by the Client, Prevolution Digital will procure website hosting and maintenance services utilising the very best available third-party Amazon Cloudfront servers, which typically have 99.99% uptime. This means that, for all practical purposes, the website should always be available, however Prevolution Digital cannot guarantee that the website hosting will be available to the Client at all times, especially in the event of a failure beyond Prevolution Digital's control and accept no liability for any damage, loss or inconvenience which may be incurred either directly or indirectly as a result of such circumstances.

8.2. Payment for hosting and maintenance must be arranged in advance with the third-party provider and will be via a monthly online billing system.

8.3. In the event that the client fails to make an agreed monthly payment for hosting services, the hosting provider will permit a grace period where their billing system will attempt to recharge the clients account or card.

If payments fail past the grace period, their hosting will be cancelled and their site taken offline.

8.4. In order to reinstate the clients hosting service Prevolution Digital will need to add back the client billing & hosting subscription and add in the custom domain again. Prevolution Digital may charge an administration fee, currently £87 (eighty-seven pounds) for reactivating the Client's website.

8.5. For the purpose of maintenance services, website hosting may have to be suspended for short periods of time. Prevolution Digital will endeavour to notify the Client of any such periods in advance.

9. Digital Marketing, Search Engine Optimisation (SEO) and Pay Per Click (PPC) Services

9.1. Prevolution Digital will provide the Digital Marketing Services detailed in the Proposal or scope of works. Such services shall include only initial SEO and PPC set-up and no ongoing SEO or PPC services shall be provided.

9.2. Prevolution Digital will use reasonable endeavours to improve the position of the Client's search engine results, but do not guarantee any specific placement or higher placement on search engine results.

9.3. Prevolution Digital will have no liability for any changes in position of the Client's website on search engine results and the Client acknowledges that Prevolution Digital has no control over the policies of search engines with respect to the type of website and/or content that they accept or the way in which websites are ranked either now or in the future.

9.4. Where Prevolution Digital recommends that the Client takes certain technical actions in order to allow Prevolution Digital to provide the services detailed in this condition 9 then the Client agrees to implement such recommendations. Where the Client fails to do so it acknowledges that Prevolution Digital will not be liable for failing to perform such services.

10. Intellectual Property Rights

10.1. Save where agreed otherwise in writing (for example, where Prevolution Digital agree to licence the design and code of a website to the Client for an annual fee), all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials (excluding any Client Material) shall be owned by Prevolution Digital.

10.2. Subject to condition 10.4, Prevolution Digital licenses all such rights referred to in condition 10.1 to the Client free of charge and on a non exclusive, worldwide basis to such extent as is necessary to enable the Client to make use of the website, the Deliverables, and the Services. This licence is terminated with immediate effect as soon as any invoice becomes overdue. In the event that the Client wishes to use the Deliverables and/or any of the Intellectual Property Rights for purposes outside of the scope of the Contract, [as set out in the Proposal or scope of

works] prior to any such use the Client shall obtain the prior written agreement of Prevolution Digital on commercial terms to be agreed.

10.3. The Client grants Prevolution Digital a licence to the Client Material in order to provide the Services.

10.4. The Client acknowledges that where Prevolution Digital does not own the Pre-existing Materials, the Client's use of rights in Pre-existing Materials is conditional on Prevolution Digital obtaining a written licence from the relevant licensor.

10.5. The Client acknowledges that it is not the obligation of Prevolution Digital to search for registered trademarks or to contact the Intellectual Property Office on behalf of the Client unless specifically requested by the Client, agreed by Prevolution Digital within the contract and on confirmation of the Proposal or scope of works.

10.6 Use of CMS - Assets added by Client. Image Rights.

It is important that any images are used with consent of the originator and credit is given where necessary. Usually this relies on obtaining written consent or following the Creative Commons directive attached.

As the Client can be adding images themselves, Prevolution Digital take no responsibility for them not complying with Copyright Law.

We would prefer to give advice and offer our own proprietary images where possible. No visible attribution need be supplied where they come from Prevolution Digital. Use of the Attribution field is advised if images supplied by a third party.

11. Limitation of Liability

11.1. This condition 11 sets out the entire financial liability of Prevolution Digital (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Client in respect of: any breach of the Contract;

11.1.1. any use made by the Client of the Services, Deliverables, or any part of them; and

11.1.2. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

11.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3. Nothing in these Conditions limits or excludes the liability of Prevolution Digital:

11.3.1. for death or personal injury resulting from negligence; or

11.3.2. for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by Prevolution Digital.

11.4.1 Subject to condition 11.2 and condition 11.3 Prevolution Digital shall not be liable for loss of business; or loss of goods; or loss of contract; or loss of use, for example, including but not limited to the Client's website being unavailable; or loss of corruption of data or information; or any special, indirect, consequential, or pure economic loss, costs, damages, charges or expenses.

11.4.2 Prevolution Digital's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance of the Contract shall be limited to an amount equal to the charges paid for the Services in the twelve months immediately preceding the event which gave rise to the claim.

12. Data Protection

12.1. The Client agrees to comply with its obligations as a data controller under the provisions of the Data Protection Act 1998. The Client acknowledges and agrees Prevolution Digital will be a data processor for the purposes of the Data Protection Act 1998.

13. Termination

13.1. Either party may terminate the Contract without liability to the other on giving the other no less than 4 weeks written notice to the other party (with the exception of hosting contracts which require no less than 13 weeks' notice):

13.2. Without prejudice to any other rights or remedies which the parties may have either party may terminate the Contract immediately upon written notice in the event that:

13.2.1. the other party commits a material breach of any of the terms of the Contract and (if such breach is remediable) fails to remedy that breach within 14 (fourteen) days of that party being notified in writing of the breach; or

13.2.2. the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

13.2.3. 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) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

13.2.4. 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 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; or

13.2.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on 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;

13.2.6. 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; or

13.2.7. a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or

13.2.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or

13.2.9. 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 upon or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

13.2.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is a subject that has an effect equivalent or similar to any of the events mentioned in condition 15.3.3 to condition 15.3.9 (inclusive); or

13.2.11. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

13.3. Prevolution Digital may terminate the Contract on one month's written notice if there is a change of "control" of the Client (as defined in section 574 of the Capital Allowances Act 2001).

13.4. On termination of the Contract for any reason:

13.4.1. the Client shall immediately pay to Prevolution Digital all outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Prevolution Digital may submit an invoice, which shall be payable immediately on receipt;

13.4.2. the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

13.5. On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect: condition 10; condition 11; condition 12; condition 13; and condition 15.12.

14. Confidentiality and Prevolution Digital's Property

14.1. The Client shall keep in strict confidence all technical or commercial know how, specifications, inventions, processes, or initiatives which are of a confidential nature and have been disclosed to the Client by Prevolution Digital, its employees, agents, consultants or subcontractors and any other confidential information concerning Prevolution Digital's business or its products which the Client may obtain.

14.2. The Client may disclose such information:

14.2.1. to its employees, officers, representatives, advisers, agents, or subcontractors who need to know such information for the purposes of carrying out the Client's obligations under the Contract; and

14.2.2. as may be required by law, court order or any governmental or regulatory authority.

14.3. The Client shall ensure that its employees, officers, representatives, advisers, agents, or subcontractors to whom it discloses such information comply with this condition

14.4. The Client shall not use any such information for any purpose other than to perform its obligations under the Contract.

14.5. All materials, equipment and tools, drawings, specifications and data supplied by Prevolution Digital to the Client (including Pre-existing Materials and Prevolution Digital's Equipment) shall, at all times remain the exclusive property of Prevolution Digital, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to Prevolution Digital, and shall not be disposed of or used other than in accordance with Prevolution Digital's written instructions or authorisation.

15. General

15.1. Prevolution Digital shall have no liability to the Client under the Contract if it is prevented from, or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lockouts or other industrial disputes (whether involving the workforce of Prevolution Digital or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

15.2. No variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15.3. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise.

15.4. If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected. If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.5. The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

15.6. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).

15.7. The Client shall not, without the prior written consent of Prevolution Digital, assign any of its rights or obligations under the Contract. Prevolution Digital may at any time assign, or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

15.8. Nothing in the Contract is intended to, or shall be deemed to constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

15.9. A person who is not a party to the Contract shall not have any rights under or in connection with it either under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

15.10. Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by prepaid first class post, recorded delivery or by commercial courier to the other party or as otherwise specified by the relevant party by notice in writing to the other party.

15.11. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract.

I / we acknowledge that I / we have read and agree to the above Terms and Conditions.

Print name	
Position	
Business Name	
Signature	
Date	