

Digital NRG Ltd Terms and Conditions for the supply of Services 2019

1. Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

Agents: those people, organisations or companies that are engaged by Digital NRG Ltd to sell the Products.

Advertising Costs: the amount that it is agreed between the parties (in writing) that is paid by the Customer (each month) on search engine keyword (including Google AdWords) charges.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Control: has the meaning given in Section 1124 of the Corporation Tax Act 2010 and the expression change of control shall be construed accordingly.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.7.

Contract: the contract between Digital NRG Ltd and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from Digital NRG Ltd.

Digital NRG Ltd: a private limited company registered in England and Wales with company number 08803937 whose registered office is situated at Suite 1 Liberty House, South Liberty Lane, Bristol, BS3 2ST.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Initial Term: a fixed period of 6 months from the date hereof unless otherwise stated in the Order.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, moral rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: The Customer's order for Services as set out in the Customer's purchase order form.

Products: any mobile application or other deliverable in any media including without limitation computer programs, website, data, reports and specifications forming part of the Services.

Services: the provision of a search and marketing optimisation campaign or as otherwise detailed in the Order Confirmation.

Specification: the description or specification of the Services provided in writing by Digital NRG Ltd to the Customer in the Order Confirmation.

Term: The Initial Term plus any consecutive monthly rolling over period until terminated on 30 days' written notice.

Third Party Providers: suppliers who provide Products to Digital NRG Ltd to be able to provide these Products to the Customer as part of the Services, including but not limited to eKomi, Response Tap, TSO, WordPress, ManageWP, ContactDB, Google AdWords, and any other Product supplier.

Website Page(s): any website or web page (which is or will be hosted at the domain name stated in the Order Confirmation) to which the Services relate.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) Condition, Schedule and paragraph headings shall not affect the interpretation of these Conditions;
- (e) References to conditions and Schedules are to the conditions and Schedules of these Conditions and references to paragraphs are to paragraphs of the relevant Schedule;
- (f) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (g) a reference to **writing** or **written** includes faxes and e-mails.

2. **Basis of contract**

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions and is only valid for acceptance by Digital NRG Ltd for a period of 20 Business Days from its date of issue.

2.2 The Order shall only be deemed to be accepted when Digital NRG Ltd issues the Order Confirmation at which point, and on which date the Contract shall come into existence (Commencement Date).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Digital NRG Ltd which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by Digital NRG Ltd, and any descriptions or illustrations contained in Digital NRG Ltd.'s websites or brochures, are issued or published for the sole purpose of giving an approximate idea and guidance of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Conditions contained in Schedule 1 of these Conditions are specific Conditions relating to different Services provided by Digital NRG Ltd to the Customer, where relevant.

3. Supply of Services

3.1 Digital NRG Ltd shall, where possible, supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 Digital NRG Ltd shall use all reasonable endeavours to meet any performance dates specified in the Order Confirmation, but for the avoidance of any doubt any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 Digital NRG Ltd shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Digital NRG Ltd shall notify the Customer in any such event.

3.4 Digital NRG Ltd warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5 If the Customer notifies Digital NRG Ltd in writing within 20 Business Days of an error contained in any video, blog, press release, news or social media outlet, Digital NRG Ltd will where it is possible to do so use reasonable endeavours to take down, amend or rectify any mistakes (as appropriate in the circumstances) save for in circumstances where the Customer is responsible for such error or representation.

3.6 If the Customer notifies Digital NRG Ltd in writing within 5 Business Days of an error contained in any advertising content, Digital NRG Ltd will where it is possible to do so use reasonable endeavours to take down, amend or rectify any mistakes (as appropriate in the circumstances) save for in circumstances where the Customer is responsible for such error or representation.

3.7 Third party internet service providers, search engines and providers of other internet-based services may update their service processes and products from time to time affecting the operation of the Services. These changes are beyond Digital NRG Ltd's control. Digital NRG Ltd shall therefore not be responsible to upgrade or modify the Services following delivery of any Website Page(s) (as part of its Services) to comply with such updates. Any such upgrades or modifications shall be subject to such additional Charges as the parties may expressly agree in writing.

3.8 The Customer acknowledges and agrees that Digital NRG Ltd may without limitation provide Services (including without limitation web pages, websites and internet marketing systems) to other businesses including those in the same or similar line of business to the Customer.

3.9 Whereas Digital NRG Ltd may be providing website or web page optimisation services, advertising or marketing advice and recommendations to the Customer as part of the Services, Digital NRG Ltd does not warrant that any sales or marketing result or objective shall be achieved or be achievable at all or by any given date. The Customer accordingly acknowledges that any decision to follow Digital NRG Ltd's advertising or marketing advice and recommendations or to use the Services is at the Customer's sole risk. For the avoidance of doubt Digital NRG Ltd shall have no liability whatsoever in this respect.

3.10 The Customer acknowledges that where the Service includes call tracking, Digital NRG Ltd will only store a copy of each call for 120 days from the time and date of the call. In the event that the Customer requires a copy of a call, there shall be a £3.50 fee for providing the call. For the avoidance of any doubt, Digital NRG Ltd will not be liable for malfunctioning telephone lines and in respect of supply call tracking code (in connection with websites), Digital NRG Ltd will not be liable for errors or omissions in the content or the maintenance of the correct code.

3.11 Where Digital NRG Ltd has purchased or agreed to endeavour to or to purchase a domain name or has agreed to handle the renewal of a domain name as part of the Services, the following shall apply:

- (a) A purchase of a domain name involves an application to register it with the relevant domain name registry and Digital NRG Ltd cannot therefore guarantee that the purchase or registration of a domain name will be successful;
- (b) The Customer agrees to be bound and subject to the terms of the relevant register where the domain name is or may be registered; and
- (c) where Digital NRG Ltd have agreed to handle the renewal of a domain name registration as part of the Services Digital NRG Ltd shall be deemed to have the Customer's authority to renew the domain name registration throughout the Term unless the Customer expressly notifies Digital NRG Ltd in writing at least 30 days prior to the domain name's expiry date.

4. Customer's obligations

4.1 The Customer shall:

- (a) ensure that the terms of the Order Confirmation and any information it provides in the Specification are complete and accurate;
- (b) co-operate with Digital NRG Ltd in all matters relating to the Services and respond promptly to any of Digital NRG Ltd's requests for instructions, feedback or approval;
- (c) provide in a timely manner Digital NRG Ltd with such information and materials as Digital NRG Ltd may require in order to supply the Services, and ensure that such information is complete and accurate;
- (d) obtain and maintain all necessary licenses, permissions and consents which may be required before the date on which the Services are to start;
- (e) be solely responsible for the accuracy, appropriateness, lawfulness and compliance of all adverts, web pages and other materials or Products produced by Digital NRG Ltd as part of the Services (and any amendments to all adverts, web pages and other materials or Products produced by Digital NRG Ltd) and must therefore check all such materials;
- (f) Be solely responsible for the technical operation of the Website Page(s) or apps and any and all related equipment (in so far as and to the extent it does not form part of the Services);
- (g) Within 21 days of receiving Digital NRG Ltd's monthly Search Engine Optimisation report, inform Digital NRG Ltd (in writing) of any content that the Customer considers unsuitable; and
- (h) ensure that it complies with its obligations as a data controller in accordance with Data Protection Legislation.

4.2 If Digital NRG Ltd's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- (a) Digital NRG Ltd shall without limiting its other rights or remedies or interruption of the Customer's obligations to pay the Charges have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Digital NRG Ltd's performance of any of its obligations;
- (b) Digital NRG Ltd shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Digital NRG Ltd's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall indemnify Digital NRG Ltd on demand for any costs or losses sustained or incurred by Digital NRG Ltd arising directly or indirectly from the Customer Default.

4.3 A failure to adhere to clause 4.2 of these Conditions may result in the Charges increasing.

5. Charges and payment

5.1 The Charges for the Services shall be as set out in the Order Confirmation subject to adjustment under clause 5.2 and 5.3:

5.2 Digital NRG Ltd reserves the right to increase its standard daily fee rates at any time during the Term. Digital NRG Ltd will give the Customer written notice of any such increase 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Digital NRG Ltd in writing within 2 weeks of the date of the Digital NRG Ltd's notice and Digital NRG Ltd shall have the right without limiting its other rights or remedies to terminate the Contract by giving 1 week's written notice to the Customer.

5.3 The Charges shall exclude expenses for third party goods and services supplied by the Third-Party Providers (unless expressly stated otherwise in the Order Confirmation). Where the Customer has agreed to Digital NRG Ltd making any purchase on its behalf from a Third Party Provider and the purchase price has not been ascertained at the time that the Customer has given its consent, the amount of the purchase price shall be added to and form part of the Charges.

5.4 All Charges shall be payable by the Customer in advance of the Services on a monthly basis unless otherwise agreed in the Order Confirmation.

5.5 Digital NRG Ltd shall generally issue invoices on the first Business Day of each calendar month for Services to be supplied in the following calendar month or as otherwise agreed.

5.6 The Customer shall pay each invoice submitted by Digital NRG Ltd:

(a) within 7 days of the date of the invoice unless agreed otherwise in writing or a different time frame stated on the order form; and [(b) in full and in cleared funds to a bank account nominated in writing by Digital NRG Ltd, and time for payment shall be of the essence of the Contract.

5.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by Digital NRG Ltd to the Customer, the Customer shall, on receipt of a valid VAT invoice from Digital NRG Ltd (or any Third Party Provider, where relevant), pay to Digital NRG Ltd such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.8 If the Customer fails to make any payment due to Digital NRG Ltd under the Contract by the due date for payment, then:

(a) The Customer shall pay interest on the overdue amount at the rate of 8% per cent per annum above the Bank of England's base rate from time to time as prescribed under the Late Payment of Commercial Debts (Interest) Act 1998; and

(b) Digital NRG Ltd can claim compensation/debt collection costs as prescribed under the Late Payment of Commercial Debts Regulations 2002.

5.9 Where appropriate within the Charges will be included an amount that Digital NRG Ltd will apply as a management fee. This will be provided by Digital NRG Ltd upon request.

5.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Digital NRG Ltd may at any time and at its absolute discretion, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Digital NRG Ltd to the Customer.

6. Intellectual property rights

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services and Products are owned by Digital NRG Ltd (save for those owned by Third Party Providers).

6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Digital NRG Ltd obtaining a written end-user license or sub-license from the relevant licensor on such terms as will entitle Digital NRG Ltd to license such rights to the Customer.

6.3 During the Term Digital NRG Ltd hereby grants the Customer a non-exclusive non-transferrable license of the Intellectual Property Rights in the Services and Products for the purpose of using and operating the Products where such Intellectual Property Rights are owned by Digital NRG Ltd.

6.4 The Customer shall not sub-license assign or otherwise transfer the rights granted in clauses 6.2 or 6.3.

6.5 Save where outlined by the parties all information or materials or Intellectual Property Rights supplied to Digital NRG Ltd by the Customer in connection with the Contract will remain the property of the Customer.

6.6 The Customer hereby grants Digital NRG Ltd an irrevocable, royalty free license to use all such information and materials and Intellectual Property Rights supplied under clause 6.5 for all purposes connected with the provision of the Services (or otherwise in connection with the Contract).

6.7 The Customer warrants it has the right to:

(a) Disclose the information and materials and Intellectual Property Rights referred to in clause 6.5; and

(b) Grant the licence set out in clause 6.6; and

The Customer shall indemnify and hold Digital NRG Ltd harmless from and against any and all demands, liabilities, costs, claims, expenses, damages and losses incurred by Digital NRG Ltd or its officers, employees, Agents or Third Party Providers, that may arise from or in connection with any allegation of infringement of Intellectual Property Rights of a third party arising due to the Customer's breach of any Intellectual Property Rights licenced to them or Digital NRG Ltd's possession or use of the Customer's information or materials or Intellectual Property Rights.

7. Data Protection

7.1 See data protection policy

8. Confidentiality

Each party (receiving party) undertakes to 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 receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain at any time during the Contract and for a period of 5 years after termination of the Contract for any reason. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or

regulatory authority or by a court of competent jurisdiction. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract. This clause 8 shall survive termination of the Contract.

9. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in these Conditions shall limit or exclude Digital NRG Ltd's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- (b) fraud or fraudulent misrepresentation.

9.2 Subject to clause 9.1:

- (a) Digital NRG Ltd shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of use or corruption of software, data or information through hacking or otherwise, loss of or damage to goodwill, or any indirect or consequential loss arising under or in connection with the Contract or any conduct or misrepresentation of its Agents;
- (b) Digital NRG Ltd are not liable for any issues with Third Party Provider Products used as part of the Products and Services supplied by Digital NRG Ltd; and
- (c) Digital NRG Ltd's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed three months Charges (to be calculated as an average of the three months prior to liability arising but where this is not possible, in the month preceding the date when liability arose).

9.3 The Customer shall indemnify and keep indemnified Digital NRG Ltd from and against all demands including but not limited to, all liabilities (civil or criminal), injury, costs, claims, expenses, damages and Losses suffered or incurred by (or asserted against) Digital NRG Ltd or its officers, employees or agents arising from or in connection with:

- (a) the Website Page(s) or app content or activities (save to the extent that Digital NRG Ltd is at fault);
- (b) the posting on the website pages or app of any content produced or added by Digital NRG Ltd which has been approved by the Customer;
- (c) any server downtimes with websites hosted with other companies;
- (d) any omission or willful or negligent conduct of the Customer; and
- (e) any breach by the Customer of the Data Protection Legislation.

9.4 This clause 9 shall survive termination of the Contract.

10. Dispute Resolution (With Escalation)

10.1 The parties shall use all reasonable endeavours to resolve any dispute arising out of or in connection with the subject matter of this Contract in accordance with this clause 10. Either party shall give to the other written notice of the dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, unless otherwise agreed in writing, all discussions shall be conducted without prejudice to the rights of each of the parties and shall be conducted between the representatives of the parties and concluded within 30 days of the Dispute Notice being received.

10.2 If the dispute is not resolved within the timescale stated above, NRG Digital Ltd is entitled to terminate the Contract with immediate effect.

11. Termination

11.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 30 days' written notice. Such notice cannot be served until after the expiry of the Initial Term sated in the contract order form.

11.2 Without limiting its other rights or remedies, Digital NRG Ltd may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 business days of that party being notified in writing to do so;
- (b) the Customer 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 or (being an individual) 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;
- (c) the Customer 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 (where a company) 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 (being a company) 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 Customer;
- (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Customer 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 its assets and such attachment or process is not discharged within 14 days;
- (g) 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 Customer (being a company);
- (h) the holder of a qualifying floating charge over the assets of that Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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 Customer;
- (j) any event occurs, or proceeding is taken with respect to the Customer 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(i) (inclusive);
- (k) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the Customer's financial position deteriorates to such an extent that in Digital NRG Ltd's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- (m) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation: or
- (n) there is a Change of Control of the Customer.

11.3 Without limiting its other rights or remedies, Digital NRG Ltd may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 7 days after being notified in writing to do so.

11.4 Without limiting its other rights or remedies, Digital NRG Ltd may suspend provision of the Services under the Contract or any other contract between the Customer and Digital NRG Ltd if the Customer becomes subject to any of the events listed in clause 11.2(b) to clause 11.2(m), or Digital NRG Ltd reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

12. Consequences of termination

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Digital NRG Ltd all of the Digital NRG Ltd's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Digital NRG Ltd shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the licences of Intellectual Property Rights granted to the Customer shall be immediately terminated;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

13. Force majeure

13.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Digital NRG Ltd including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Digital NRG Ltd or any other party), failure of a utility service, website or hosting issues, server interruptions, software viruses, failure of a 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.

13.2 Digital NRG Ltd shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

13.3 If the Force Majeure Event prevents Digital NRG Ltd from providing any of the Services for more than 4 weeks, Digital NRG Ltd shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14. General

14.1 Assignment and other dealings.

(a) Digital NRG Ltd may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all 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.

(b) The Customer shall not, without the prior written consent of Digital NRG Ltd, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

14.2 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a

company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission and with email on the receipt of a delivery notification.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.4 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.6 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.7 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Digital NRG Ltd.

14.8 Governing law. This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

14.9 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 Specific Conditions

1. Websites and hosting Service Conditions

1. If a website goes down due to server/hosting issues Digital NRG Ltd will respond within two working hours of being notified in writing by the Customer with a report to the Customer on the issue and suggested resolution. Website/hosting restoration timescales will be dependent on the issue.
2. Website hacking by a third party will result in Digital NRG Ltd having to restore the Website using earlier version backups prior to the breach and may result in loss of Website content or Products for which Digital NRG Ltd are not liable. Loss of Website content or Products will be dependent on the promptness of the Customer's written notification of any breach.
3. Digital NRG Ltd will not be liable for Website hacking resulting in a Customer's or a Customer's client's personal data being obtained or compromised and a subsequent breach of Data Protection Legislation by the Customer. The Customer must have their own Data Protection policy in place covering this potential liability.
4. Where Digital NRG Ltd host Wordpress Websites, Digital NRG Ltd will add the Customer's Website to ManageWP for automatic backup of the Website files to assist with instant re-installing of the Website should it be compromised, and Charges will be made for this Third-Party Provider service as part of the Services. This does not apply to PHP or Magento Websites.
5. Digital NRG Ltd will use reasonable skill and care to minimise junk mail being received from the Customer's Website enquiry forms and will install Captcha plugins for this purpose. These plugins do not stop all Spam or Junk email being received. Digital NRG Ltd cannot control the nature and contents of Spam and Junk mail but will investigate and report on any written notification by the Customer of high amounts of Spam and Junk mail.
6. Where Digital NRG Ltd host Wordpress Websites, Digital NRG shall add ContactDB or a similar Third Party Provider plugin to collate and store all of the Customer's Website enquiries. Digital NRG Ltd do not provide a database storage facility and are not responsible for storing Website enquiries and recommend the Customer stores their own Website enquires on their own secure database.
7. Digital NRG Ltd purchase SSL certificates from a Third Party Provider called TSO and shall add these to Customer Websites for a quoted fee as part of the Charges. Digital NRG Ltd are not able to install other Third Party Provider SSL certificates to Websites hosted by Digital NRG Ltd. If Digital NRG Ltd install an SSL certificate as part of the Services Digital NRG Ltd will automatically renew the SSL every year for the Customer and issue the recurring renewal invoice as part of the Charges. The Customer is required to provide written notice to Digital NRG Ltd 30 days before the end of each year's renewal to request cancellation of the Product as part of the Services otherwise the renewal will take place automatically and the Customer shall be liable for the new annual fee as part of the Charges.

8. Customers are responsible for their own Payment Card Industry Security Standards Council Compliance, installation of their own Anti-fraud software, setting up of web application firewalls and setting up of a Content Delivery Network. Digital NRG Ltd will not include these within the Services unless requested by the Customer.
- 1.9. Where requested as part of the Services, Digital NRG Ltd will set up the Customer with CMS and database access. The Customer is responsible for setting up unique log in details using highly secure passwords for subsequent user access. Digital NRG Ltd is not responsible for any breaches which may occur if the Customer does not follow this requirement.
- 1.10. Unless otherwise specified in the Order Confirmation, the Charges for Domain Name Registration provide an initial registration period of one or two years (**Initial Registration Period**), and the domain registration shall automatically renew each year unless the Customer instruct Digital NRG Ltd otherwise in writing at least 30 days prior to expiration of the current registration period. Each renewal shall incur Charges for Domain Name Registration. Digital NRG Ltd shall not be liable for any loss incurred by the Customer as a result of the Customer's failure to instruct Digital NRG Ltd to renew a domain name after the Initial Registration Period.
- 1.11. Digital NRG Ltd shall have no liability in respect of a Customer's use of a domain name or as to any Intellectual Property Rights infringement related to the Customer's choice of domain name. If any dispute between the Customer and any third party arises, Digital NRG Ltd reserve the right to withhold, suspend or cancel the domain name registration.
- 1.12. Digital NRG Ltd are not obliged to give full access to the CMS of a Website and will not at any time give FTP Access. This is file transfer protocol, how website files are shared for a new company to then host the website. Digital NRG Ltd will grant user access to a Customer's Website CMS but failure to pay the relevant Charges for the Product or Service as and when due and payable may result in access being denied or the Website being taken down from the server until the Charges are settled in full.
- 1.13. Digital NRG Ltd will require 50% of the Website build costs in advance of the Services being commenced (**Initial Payment**) and 50% upon completion and before the 'go live' date. Digital NRG Ltd will not set any Website live or share relevant files until all Charges are received in cleared funds from the Customer. The Initial Payment will cover the initial design, consultation and build costs and is non-refundable.
- 1.14. Digital NRG does not own or manage email hosting and whilst it may offer advice to a client, the sending and receiving of emails directly or through a website portal is not the responsibility of Digital NRG. Therefore to run and operate website enquires effective for all Digital NRG created websites the client must complete the following steps. Provide Digital NRG with SMTP user name (email address), password, SMTP host, SMTP port and authentication methods. An SPF record is required to be set up should a client request the sending email to be different to that of the registered and live domain name that the website is placed upon and connected to. A client will need to contact their email provider to help action this. Digital NRG strongly advises SMTP details as it will safeguard the delivery of website enquiries.

1.15. Should a website project build take longer than four months to complete, Digital NRG will require the 2nd instalment of the website project to be paid for in full before the project is completed.

1.16. Digital NRG does not own or manage email hosting and whilst it may offer advice to a client, the sending and receiving of emails directly or through a website portal is not the responsibility of Digital NRG. Therefore to run and operate website enquires effective for all Digital NRG created websites the client must complete the following steps. Provide Digital NRG with SMTP user name (email address), password, SMTP host, SMTP port and authentication methods. An SPF record is required to be set up should a client request the sending email to be different to that of the registered and live domain name that the website is placed upon and connected to. A client will need to contact their email provider to help action this.

1.17 . If Digital NRG have built an ecommerce platform that contain product databases, the database is the solely owned by Digital NRG. If a client has provided the entire database in the required format and all assets in the appropriate sizes, the database is co-owned during the paid contractual period and released to the client subject to NDA's agreed on each client contract. Databases built, collated, partially or fully and managed by Digital NRG are the Intellectual property of Digital NRG as per clause 6.2. The client may request to purchase the database at the end of the contractual period and is subject to an agreed fee by both parties.

1.18. All databases collated, created and managed by Digital NRG will be subject to the provision and access to data, images and assists by the client. Quality of the assets should be a minimum of 300 dpi for images and the content provided unique. If Digital NRG are requested to complete a product database or spreadsheet this will be done to the best of the employed agent's ability but the written word, image quality cannot be guaranteed if the correct Information is not provided.

1.19. For all subscription based websites where a client pays a monthly hosting and management fee, service level agreements will be outlined for each client in a separate schedule and form the basis of the contract. Subscription websites are owned and managed any Digital NRG and are subject to clause 6.1.

2.1 Should DNRG manage a client product database (EG: Car Stock Lists), Digital NRG shall remind the client on a monthly basis to update the feeds with updated models, new models and deleted/discontinued models but Digital NRG are not responsible for updating these. DNRG will support clients with completing databases subject to SLA's at contract level but updated notifications to product changes are the responsibility of the client.

2.2 All images and videos provided by a client must be suitable for use and compliant with platform policy, but they also need to be licensed for advertising and this is the client's responsibility.

2.3 If Digital NRG engage with third party suppliers to provide database information, assets, images, videos and the like, Digital NRG are not responsible for the FTP feeds or API's to be active and live. This will be seen as added value and not a contractual service.

2. Search Engine Optimisation Service Conditions

- 2.1. Digital NRG Ltd shall not be obliged to produce content provided by a Customer which in their opinion is controversial. Digital NRG Ltd shall not be liable for any third party claims as to issues with content provided by the Customer and the Customer shall indemnify Digital NRG Ltd for all and any liability, costs and expenses incurred as a result.
- 2.2. Content deemed to be negative or offensive in Digital NRG Ltd's sole opinion shall be removed. Digital NRG Ltd will not be liable for the content, removal of the Website nor any search engine indexed content which may be available after the Website has been taken down and the Customer shall fully indemnify Digital NRG Ltd for any liability incurred in this respect.
- 2.3. If Digital NRG Ltd has been issued with a brand guide by the Customer, Digital NRG Ltd shall use reasonable endeavours to follow it. If the Customer believes the content to be outside of the provided guide, it shall notify Digital NRG Ltd promptly in writing so that Digital NRG Ltd can provide changes to the Customer for approval.
- 2.4. The Customer provides Digital NRG Ltd the authorisation to produce written content, infographics, videos, images, banners, social media posts, blogs and reviews on behalf of the Customer. Digital NRG Ltd shall follow Customer issued brand guides, where submitted to Digital NRG Ltd, but Digital NRG Ltd will not be held responsible for content published on behalf of the Customer. Digital NRG Ltd provides no guarantee as to where content shall be published, indexed or shared.
- 2.5. Customers are responsible for notifying Digital NRG Ltd in writing promptly as to any content which is not in their opinion representing their brand or where they have issues with where it appears. Digital NRG Ltd will use reasonable endeavours to work with the Customer to change and, where possible, remove such content. Links, posts, blogs and similar materials that appear on third party websites may result in Digital NRG Ltd being unable to remove this content.
- 2.6. Where Digital NRG Ltd registers the Customer with online directories, social bookmarking sites and other similar Products, Digital NRG Ltd will take reasonable care to ensure that the correct name, address, phone numbers and company biographies are displayed. The Customer is responsible for ensuring that this information is kept updated and will inform Digital NRG Ltd in writing if changes are to be made. Digital NRG Ltd reserve the right to charge an administration fee to update these listings.
- 2.7. Unique agency logins for access to the websites with which Digital NRG Ltd has registered the Customer with are the property of Digital NRG Ltd. Digital NRG Ltd may at its discretion provide a list of websites it has registered Customers with but Digital NRG Ltd will not supply logins or access to the Customer.
- 2.8. Any video created and published to Customer Websites or video channels is the property of Digital NRG Ltd. Customers must request use of such videos for other purposes however Digital NRG Ltd reserve the right to refuse or charge an administration fee for providing an edited version. Customers or commercial agents publishing videos produced by Digital NRG Ltd on alternative channels including but not limited to Facebook without Digital NRG Ltd.'s prior written consent, will result

in Digital NRG Ltd issuing an invoice for the production of the video or request it be taken down.

3. Digital NRG Ltd Paid Search & Optimisations, Pay Per Click and Google AdWords Service Conditions

- 3.1. Digital NRG Ltd Search & Optimisation campaigns will be subject to management fees being included in the Charges and or where relevant, deducted from the agreed Customer campaign budget. These fees shall include Agents agreed commissions subject to individual Agent contracts, account manager's commissions, operating costs, Third Party Provider fees, administration costs and reporting platforms. Customers may request a breakdown of fees upon a written request and fees may be determined by Customer monthly budgets, the complexity of campaigns and Agency time to manage such campaigns.
- 3.2. Digital NRG Ltd reserves the right to refuse access to Google and Bing accounts. The built campaigns are the property of Digital NRG Ltd and during the Initial Term and following the termination of the Contract, Digital NRG Ltd is the owner of the historical data and campaigns and shall reserve the right to refuse access or a copy of such campaigns and the campaign ID.
- 3.3. Digital NRG Ltd is not obliged to provide admin or read only access to any Digital NRG Ltd Paid Search & Optimisation campaign.
- 3.4. Digital NRG Ltd shall provide access, if required, to daily, weekly or monthly reports of all Customer Paid Search & Optimisation campaigns.
- 3.5. Digital NRG Ltd shall endeavor to create and publish accurate extended text ads across its chosen Third-Party Provider's platforms. A copy of keywords and text ads may be requested by a Customer, subject to Digital NRG Ltd.'s prior written approval, but Digital NRG Ltd will not be liable for inaccurate adverts, pricing offers, seasonal messages and the promotion of products or services of the Customer where they have not made a written request to amend or update such adverts.
- 3.6. All liability resulting from the content of marketing messages requested to be published by the Customer remains with the Customer and the Customer indemnifies Digital NRG Ltd for all and any liability as a result.
- 3.7. Customers warrant that their products or services being marketed by Digital NRG Ltd are compliant with current legislation and fit for purpose and shall indemnify Digital NRG Ltd for any liability as a result of this being untrue.
- 3.8. Should a Digital NRG Ltd Third-Party Provider including but not limited to Google or Facebook deem campaigns not fit for purpose or breaching their own policies, Digital NRG Ltd shall notify the Customer and remove the campaign. Digital NRG Ltd will not be liable for campaigns being suspended or going into review. Should any such platform pursue legal action for inappropriate advertising Digital NRG Ltd shall notify the Customer but will not be liable and the Customer shall fully indemnify Digital NRG Ltd for any liability incurred.

4. Paid Social Service Conditions

- 4.1. The Customer warrants that any databases provided for the purpose of marketing will be legitimate and Data Protection Legislation compliant. Digital NRG Ltd remove any email address from a marketing database when requested to do so by the Customer but the Customer needs to allow 7 working days for this to be fully effective.
- 4.2. Digital NRG Ltd are not liable for Third Party Providers taking down or suspending adverts that are not compliant with the Third-Party Provider policies.

5. Social Media Management Service Conditions

- 5.1. Digital NRG Ltd will produce content in line with the Customer's brand guidelines when provided with them. A sample test content may be provided for approval by the Customer. Digital NRG Ltd shall not be liable for inaccurate content when the Customer has not provided brand guidelines or approved brand content.
- 5.2. Any content that has been created and published by Digital NRG Ltd will be removed within 7 working days upon request by the Customer. Where content has been shared, syndicated and published on Third Party Provider websites by third parties, Digital NRG Ltd may be unable to gain access to request the removal of this content. The Customer will be responsible for requesting the removal of the shared content not syndicated by Digital NRG Ltd.
- 5.3. Associations & Affiliations. Links, affiliations and associations could be made by sharing content on behalf of a client and whilst Digital NRG staff shall endeavor to acquire the links and associations are relevant and appropriate some clients may not agree. Many links, associations and affiliations are made to increase off-page SEO activity and ultimately to drive higher organic rankings in the Search Engine Results Pages. Digital NRG may list a business on a third-party website to support organic traffic and domain name authority. We will endeavor to list websites on suitable 3rd party sites and cannot be held responsible if the client deems some sites to be unsuitable. We will request a link to be removed if a Client deems it unsuitable.
- 5.4. Customers must notify Digital NRG Ltd in writing if they require listed content to be removed.
- 5.5. All Facebook & Instagram advertising campaigns will be run on the Digital NRG Facebook manager. These accounts will remain the sole proprietary of Digital NRG and Digital NRG will not be able to provide any form of access including but not fully inclusive of read only or administration access. At the end of a campaign the ad account, its adverts and data history shall remain the property of Digital NRG.

6. Call Tracking Service Conditions

- 6.1. All call tracking Customer instructions will be opted in to recording services in accordance with Third Party Provider Response Tap's requirements.
- 6.2. Under PCI rules, any payments that a client takes from its own clients must be on a secure line. Digital NRG requires all clients to hang up phone calls that have come from a response tap call tracking number and call their client back on a secure line to take a payment.

6.3. All calls and data will be held for 30 days maximum by Third Party Provider Response Tap.

6.4. From time to time the collection of call recordings may fail and the servers may not collect calls. Digital NRG Ltd will not be held responsible for the failure to collect all call recordings as to server failure or any other Force Majeure reason.

7. Reviews and Rating Service Conditions

7.1. If a DNRG client is found by eKomi to be placing fictitious reviews to increase reviews ratings and the number of reviews, eKomi can impose a \$50,000 fine upon the business. The DNRG client is responsible for ensuring the. See attached eKomi Contract.

7.2 There may be occasions where a tablet or phone may not be connected to a functioning network. Such devices need to be connected to the internet for reviews to be collected and published. Digital NRG Ltd is not liable for reviews that are not gathered or collated in these circumstances.

7.3. Digital NRG Ltd is not responsible for any views or opinions shared via the review's platform provided by the Third-Party Provider nor does Digital NRG Ltd have the ability or right to remove any unfavorable reviews that have been published. Digital NRG Ltd will submit to the Third-Party Provider any such complaints made by the Customer in writing as to the content of unfavorable reviews but cannot guarantee the removal of such.

8. GDPR & Client Contact Databases:

8.1 It is compulsory that databases provided by clients that are to be used for re-marketing campaigns, are GDPR compliant and follow Google, Facebook, Twitter, Snapchat and Bing policies. Digital NRG will accept and upload databases of contacts, email addresses, phone numbers and accept that the client has taken all required steps to ensure the data is legal and complaint. Any such breach shall be the client's responsibility and Digital NRG will pass over and inform a DNRG client of any complaints or breaches to the client.

8.2 By signing a Digital NRG contract or terms of service agreement you are accepting the any such breaches is the liability of the client not Digital NRG. Should subsequent Subject Access Requests be made to Digital NRG, Digital NRG shall notify the client, but the client will take full responsibility to deal with the request and any such legal challenges over its legitimate business use. As a processor of data, Digital NRG will accept that the client has acted in good faith and taken the necessary steps to ensure the data is legal, GDPR compliant and fit for purpose. Digital NRG will accept any email or personal databases in good faith.

8.3 As the processor of data and supplier of Digital Marketing services, Digital NRG is not responsible or liable for its clients being GDPR compliant. Whilst Digital NRG offer the installation of Cookiebot software and the ability to add SAR plug ins for a fee, Digital NRG is not responsible for installing these legally required features. As a website design house, Digital NRG are there to provide a functioning for purpose website, but the client must instruct Digital NRG that they wish for their site to be GDPR compliant.

8.4 The third-party company used to install Cookie tracking and opt in options can be set up with opt out options, but Digital NRG clients must state their preference as the software will be installed with opt out options. Once a client informs Digital NRG to set it up with Opt-In portions this shall stand.

8.5 Digital NRG advises that its clients write a privacy policy for their website, but this is not Digital NRG's responsibility to write or add one by default. This is the responsibility of the client.

8.6 Digital NRG may add a standard cookie policy to a website by default but again this is the responsibility of the client to supply one that is deemed fit for purpose.

8.7 Digital NRG will not share any client data with any third party without prior consent. Data acquired will be shared directly between the client and Digital NRG and any other named parties that the client has agreed to in writing to Digital NRG. If this has not been requested or agreed data will not be shared with competitors or third parties unless Digital NRG has received written or verbal agreement to do so. Named third parties will be required to sign an NDA which can be shared with a client upon request.

9. Google Data Studios / Google analytics Accounts / Call Tracking Data:

9.1 All created Google Data Studio accounts, Google Analytics accounts, call tracking accounts and Digital NRG proprietary reporting platforms are created in good faith for a client to help demonstrate the performance of their campaigns. Under clause 6.1 these are the IP of Digital NRG but during the contracted period they will be shared with a client or advised third party subject to the corresponding NDA and non-compete clauses in terms of how this data is used.

10. Non-Compete Clauses & End Of Contract Agreement:

10.1. Should a Digital NRG client or partner use any of the gathered data, information, databases, assets created by Digital NRG during the contractual period for commercial gain 12 months at the end of a Digital NRG contract without agreed prior consent, this will be subject to breaching clause 6.1 and where signed but not required, the NDA, if there is one in place. If a client is found to download a database, store and use for their own commercial gain or even share with a third party for a similar use then Digital NRG will reserve the right to chase compensation for the loss of this information and database.

10.2. Following clause 10.1, Digital NRG will pursue damages up to 5 times the value of the database and assets it has built. This will be equated and valued in employee time spent, database fees, associated project costs in addition to five times the value of the contractual costs during the period of the contract.

10.3. Digital NRG will not liaise with a Third-party agency or similar company when it comes to discussions migration, transfer of data and information. This includes but is not limited to, Website databases, website files for FTP, Domain name transfers, Google Analytics, Google Campaigns, Facebook campaigns, YouTube channels, Google My Business access and log ins, CMS Access, portal training and general support. Should a client leave Digital NRG and require support with the outlined list, it will be subject to the standard agency hourly rate. Currently £70 per hour as of April 2019. (Subject to change)

10.4. All requests must come from the contracted client. Only with prior agreement between Digital NRG and the client will Digital NRG lease with the third party and at the pre-agreed costs that will need to be pre-paid before any work is carried out.

