

## GENERAL TERMS AND CONDITIONS AND LICENCE AGREEMENT

Please read carefully the following terms and conditions (**'these Terms'**) for the use of the Boutique online service (**'the Service'**) provided by CM. Before You can use the Service, You must agree to be legally bound by these Terms. You can print off these Terms, or store them in your computer, for future reference. These Terms may be updated by CM from time to time without notice to You. You should review the CM website periodically for changes to these Terms.

### 1. INTERPRETATION

#### 1.1 In these Terms:

**'CM'** means Chilli Media Limited, incorporated in England and Wales under registered number 06493973, whose registered office is at 9 Sheringham Close, Allington, Maidstone, Kent, ME16 0NF;

**'Contract'** means the contract for the provision of the Service to You on the basis of these Terms;

**'Customer Data'** means the proprietary data supplied by You pursuant to the provision of the Service;

**'DPA'** means the Data Protection Act 1998, and all regulations under that Act and codes of practice and guidance issued by the Information Commissioner;

**'Effective Date'** means the date on which the Contract comes into force;

**'Fee'** means the amount charged to You for any licence of Rights Managed Content as set out in a Term Sheet;

**'Information'** means any information, data or materials supplied through the Service excluding any Customer Data;

**'Reproduction'** means publishing, re-supplying, reselling, reproducing, uploading, transmitting, licensing, distributing or otherwise making available an exact reproduction, slide projection, artist's reference, artist's illustration, layout, presentation of images or an artistic interpretation or illustration of the whole or part of any image, text, metadata, information or Rights Managed Content available on the Site or via the Service in any format or medium now existing or hereafter invented;

**'Rights Holder'** means any person who has granted a licence of rights to CM in relation to the Service;

**'Rights Managed Content'** means any content provided by CM via the Service;

**'Service'** means the Boutique online service, which provides access to images and text available for license from CM under these Terms and any Term Sheet, further details of which are set out on the Site, as varied from time to time;

**'Single Use'** means a Reproduction in one size for one edition of a single publication published in one language and one medium only;

**'Site'** means CM's website at <http://www.chillimedia.com>, or any other site used by CM from time to time for the provision of the Service;

**'Term Sheet'** means a set of terms issued to You by CM under which CM agrees to provide a licence for Rights Managed Content pursuant to your use of the Service;

**'Territory'** means the country in which the licence to reproduce the Rights Managed Content is granted;

**'Month'** means each consecutive period of four (4) weeks from the Effective Date; and

**'You'** (or **'Your'**) means the person for whom CM has agreed to provide the Service in accordance with these Terms, and includes any individual who uses the Service on behalf of any such person.

#### 1.2 In these Terms, unless otherwise stated:

- (a) a reference to a statute or statutory provision includes that statute or provision as amended, extended, re-enacted or consolidated from time to time and all statutory instruments or orders made under it;
- (b) words denoting the singular include the plural and vice versa, words denoting one gender include the others, and words denoting persons include firms, corporations or other legal entities;

(c) **'these Terms'** means the terms and conditions set out in this document, as amended or extended from time to time; and

(d) **'writing'** or any similar expression includes a communication by fax or email, but not text message or similar means.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

## 2. REGISTRATION

2.1 To use the Service, You must first complete the registration process on the Site.

2.2 If You register with the Site on behalf of another individual, firm, company or other person, You must ensure that the other person is aware of and agrees to these Terms, and You warrant that You have done so and are authorised to bind that other person.

2.3 In order to access the Service, You will be required to enter the username and password You selected during the registration process.

2.4 You may change Your password at any time. You are responsible for the security and proper use of all passwords and must take all necessary steps to ensure that all passwords are kept confidential, and are used properly and not disclosed to unauthorised people.

2.5 You must inform CM immediately if You have any reason to believe that any password has become known to someone not authorised to use it or if any password is being or likely to be used in an unauthorised way. CM will not be liable if passwords are disclosed or used improperly.

2.6 If CM has reason to believe that there is likely to be a breach of security or misuse of the Service, CM may change any or all of Your passwords and notify You accordingly.

2.7 If You forget any password, You will be given a new password once You contact CM and satisfy the security checks which CM operates.

2.8 You confirm that all the information supplied by You during the registration process is true, complete and accurate in all respects. You agree to notify CM immediately of any changes to Your registration information. If CM believes that You have provided false information or that You have intentionally failed to notify CM of any changes to this information, CM reserves the right to terminate Your access to the Service immediately and without notice.

## 3. THE SERVICE

3.1 CM will provide the Service to You as from the Effective Date, subject to these Terms.

3.2 CM hereby grants to You a non-exclusive licence to use the Service for the purposes of Your business of which You have notified CM as part of the registration process.

3.3 The Rights Managed Content which You can access through the Service and the form in which it can be supplied are as shown on the Site from time to time but, unless expressly permitted by these Terms, access to Rights Managed Content does not entitle you to Reproduce it.

3.4 You are entitled to download watermarked previews on Your own computer system for layout purposes only but are not permitted to Reproduce any Rights Managed Content or the Service or any part of it, except as expressly permitted by these Terms.

3.5 You must not adapt, alter or remove any data or metadata, convert or authorise others to adapt or convert the Site or the Rights Managed Content or any part of the Site or the Rights Managed Content into any other form without prior written approval from CM.

3.6 You must comply with all applicable laws and regulations in using the Service and any Rights Managed Content licensed to You in Your Country.

3.7 In particular (but without limitation) You are responsible for ensuring that, where applicable, You have an up to date and complete notification in force under the DPA.

3.8 It is Your responsibility to ensure that:

3.8.1 You are over 18;

3.8.2 Your computer hardware and software, networking, telecommunications systems, Internet access, email and all other necessary facilities have the necessary functionality and are in proper working order, and You have all necessary consents and licences to use the Service, other than those provided by CM as part of the Service;

3.8.3 You have in place all necessary industry standard safeguards to restrict third party access to the Service and any Rights Managed Content licensed to You;

3.8.4 You are entitled to view the Site and use the Service in Your Country;

- 3.8.5 You are responsible for restricting access to the Service and any Rights Managed Content to persons authorised for creating the end product contemplated in a Term Sheet issued to You; and
- 3.8.6 You are responsible for removing from any computer system, database or storage medium all Rights Managed Content for which any licence has expired.
- 3.9 CM reserves the right to make changes to the Site and the Service from time to time without notice to You where necessary.
- 4. GRANT OF LICENCE**
- 4.1 All licences granted by CM are conditional upon Your compliance with these terms and CM's receipt of full payment of any applicable Fee. Any licence granted to You shall terminate upon your failure to comply with any provision of these Terms or the Term Sheet or to make full payment when due, in which case CM shall be entitled to pursue all other remedies under copyright and other laws.
- 4.2 The Reproduction of any Rights Managed Content is prohibited unless otherwise indicated. Your right to Reproduce any Rights Managed Content arises only if a Term Sheet is agreed and the Fee is fully paid. You must inform us via the Service of your intended use for Rights Managed Content and CM will consider whether to grant You a licence and on what terms.
- 4.3 Any licence granted to you will include and incorporate the Contract, these Terms and the Term Sheet issued by CM to You.
- 4.4 Any licence granted to you is confidential and may not be disclosed to any third parties.
- 4.5 From time to time CM may provide You with certain pricing, technical, marketing and other confidential information. You acknowledge that such confidential information encompasses valuable trade secrets and is proprietary to CM. You agree that You will maintain the confidentiality of any confidential information that CM may provide to You (whether marked confidential or not), and You shall not use or disclose the same without the prior written consent of CM. Confidential information includes any information that is either designated as confidential by CM or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as confidential by You.
- 4.6 The Fee for any license of Rights Managed Content will be determined by your intended use by reference to the following non-exhaustive factors:
- 4.6.1 exclusive / non exclusive grant;
- 4.6.2 print / online / interactive / promotional / flash / other use;
- 4.6.3 territory;
- 4.6.4 licence term / print run / Single Use / number of transmissions;
- 4.6.5 advertising / advertorial / editorial / merchandising / compositional / dummy / other use;
- 4.6.6 date of publication;
- 4.6.7 size of use; and
- 4.6.8 credit requirements.
- 4.7 Term Sheet use definitions are:
- 4.7.1 **'Advertising'** means where the Rights Managed Content is licensed for the purpose of endorsing a product, service or business;
- 4.7.2 **'Advertorial'** means where the Rights Managed Content is licensed for the use in a feature that is styled to look like an editorial feature, but endorses a product, service or business;
- 4.7.3 **'Compositional'** means where the Rights Managed Content is licensed for the purpose of internal design only, where viewing is restricted to only those required to prepare the end product;
- 4.7.4 **'Dummy'** means where the Rights Managed Content is licensed for the purpose of internal design and consumer research, where viewing is restricted to a maximum of 100 people;
- 4.7.5 **'Editorial'** means where the Rights Managed Content is used in a manner that doesn't endorse a product, service or business;
- 4.7.6 **'Flash'** means where the Rights Managed Content is licensed for the purpose of Reproduction on television, film or movie for a maximum viewable time of 5 seconds;
- 4.7.7 **'Interactive'** means where the Rights Managed Content is licensed for the purpose of Reproduction within any media where users must or are invited

- to actively download and store content on electronic devices such as an mp3 player, mobile phone, computer or any such handheld storage device, whether the download be free or paid for;
- 4.7.8 **'Merchandising'** means where the Rights Managed Content is licensed for the purpose of Reproduction in retailable products such as posters, calendars, printed mugs, mouse mats, etc. for monetary gain, whether that be via direct sale or from sponsorship or advertising revenues;
- 4.7.9 **'Online'** means where the Rights Managed Content is licensed for the purpose of Reproduction on the internet;
- 4.7.10 **'Print'** means where the Rights Managed Content is licensed for the purpose of Reproduction as a book, magazine, newspaper or any other printed publication; and
- 4.7.11 **'Promotional'** means where the Rights Managed Content is licensed for advertising the primary licensed end product. Any such licence ends when the primary licence ends.
- 4.8 Rights Managed Content licensed for online use will be provided in 96 dpi digital format.
- 4.9 Any Rights Managed Content licensed for Online use must be removed after the expiry of the licence term. CM does not permit any form of archiving of any Rights Managed Content.
- 4.10 You will, unless otherwise specified in a Term Sheet, credit any Rights Managed Content in accordance with the credit line on the Site including the Rights Holder's name, the collection name (where applicable) and include CM as the distributor of the Rights Managed Content.
- 4.11 CM will increase the Fee where You require Rights Managed Content to be licensed uncredited.
- 4.12 Use in tear sheets by You will be charged at 50% of the Fee set out in a Term Sheet.
- 4.13 Unless otherwise specified in a Term Sheet, any use of the Rights Managed Content for any form of Promotional purposes, whatsoever, by You, will be charged at 150% of the Fee set out in a Term Sheet.
- 4.14 Where text is licensed to You, You may alter individual words within the Rights Managed Content but not the context or meaning of the text and must, at all time, portray those subjects in a positive light.
- 4.15 Any additional Reproduction outside the scope detailed within a Term Sheet may be charged at a pro rata fee at CM's sole discretion; otherwise CM's genuine pre-estimate of its loss for any unauthorised Reproduction will be twice the Fee set out in the Term Sheet for the initial delivery of the Rights Managed Content.
- 4.16 The full agreed Fee will still be payable on any Rights Managed Content published smaller than agreed in a Term Sheet.
- 4.17 You will use Your best efforts to ensure that any Rights Managed Content licensed to You is properly credited in all Reproductions and uses.
- 4.18 You warrant that You:
- 4.18.1 will not use any Rights Managed Content in a way which is or could be considered defamatory, obscene, libellous, unlawful or in a way which may cause offence to the subjects of the Rights Managed Content; and
- 4.18.2 will not impair in any way the integrity or operation of this Site.
- 4.19 Unless otherwise set out by CM You must satisfy yourself that all necessary rights, model releases or consents which may be required for Reproduction are obtained and that the use of any Rights Managed Content is not obscene, indecent, libellous or unlawful. CM makes no claim or warranty with regard to Your use of content, texts, trade marks, people, or copyright material in the Rights Managed Content. You will indemnify CM in respect of any loss, damages, costs and expenses awarded against or incurred by CM or paid by CM in settlement of any claim arising from the use of any Rights Managed Content licensed to You, Your use of the Service, any unauthorised use of the Service or Rights Managed Content, any actual or alleged infringement of the rights of any other person, or alleged breach of the Terms or the Contract.
- 4.20 Unless otherwise specified in a Term Sheet, You shall provide CM with a high-resolution pdf image of any use you make of any Rights Managed Content within 30 days of its publication date and CM may be entitled to use any such image for any marketing purposes.

## 5. PAYMENT

- 5.1 All Fees are due to CM 30 days from the publication date of any Rights Managed Content licensed to You.
- 5.2 All payments under a Term Sheet are due in pounds sterling (GBP) and any currency conversion will be calculated on the date a Term Sheet is issued using xe.com.
- 5.3 All payments under a Term Sheet are exclusive of any VAT (or similar taxes) and bank charges, for which You shall be additionally liable, subject to receipt of an invoice from CM.
- 5.4 Payment of Fees and other monies must be made using the BACS direct debit system, or as otherwise agreed with You. It is Your responsibility to make the necessary arrangements to enable payment to be made in accordance with these Terms.
- 5.5 CM will issue to You by electronic means an invoice for the Fee as payable from time to time.
- 5.6 Time for payment of any sum due under a Term Sheet is of the essence of the licence. If You do not pay in full by the due date any sum payable under a Term Sheet, CM shall be entitled, without limiting any other right or remedy it may have, to suspend or, at CM's option, to terminate the licence.
- 5.7 Unless specified otherwise in a Term Sheet, if You cancel an order within 7 days of the Term Sheet Date, You will not be charged the Fee; cancellation within 30 days will incur a 50% charge of the Fee; and the full Fee will be payable on any orders cancelled after 30 days. Any cancellation must be made in writing in accordance with these Terms.
- 5.8 In addition to any other right or remedy, CM shall be entitled to charge interest on late payments at the rate of 3% above the Bank of England interest rate from time to time in force.

## 6. RIGHTS IN THE SERVICE AND RIGHTS MANAGED CONTENT

- 6.1 Except as expressly provided in these Terms, CM reserves to itself and CM's Rights Holders the entire worldwide copyright, database right and all other intellectual property and other rights, title and interest ('Rights') in and to the Site, Service and the Rights Managed Content.
- 6.2 All content on this Site, including but not limited to images, text, graphics, logos, button icons, audio clips, data compilations, and software (collectively, the 'Content') is the property of CM, our partners, licensors or Rights Holders, and is protected by UK copyright laws. The trade marks, logos, and

service marks displayed on this Site (collectively, the 'Trade marks') are the registered and unregistered marks of CM, our partners, licensors or Rights Holders, and are protected by UK trade mark laws. Except as required under applicable law, neither the Content, the Trade marks, nor any other portion of this Site may be used, reproduced, duplicated, copied, sold, resold, accessed, modified, or otherwise exploited, in whole or in part, for any purpose without the prior written consent of CM.

- 6.3 For the protection of CM and its Rights Holders, content may be visibly, invisibly, or electronically watermarked and may include the use of digital rights management system technology within the Rights Managed Content. Such technology may permit online crawling or tracking of the Rights Managed Content obtained from CM and/or other methods of protecting, monitoring, or tracking the unauthorised use of the Rights Managed Content ('Rights Management Systems'). If you do not consent to CM's use of Rights Managed Systems, do not use the Site, the Service or any Rights Managed Content found therein.

- 6.4 You shall at CM's request do all acts and things and execute all documents, deeds and instruments which are reasonably necessary for the protection and enforcement of CM's (and CM's Rights Holders') Rights in and to the Service and the Rights Managed Content, and You shall not do or permit to be done anything that will or might bring such Rights into question.

- 6.5 You must not remove any copyright, database right, trade mark, metadata or other proprietary marking on the Site or on any Rights Managed Content or any part of the Service.

- 6.6 You are responsible, within the best of Your knowledge, for reporting to CM any additional use or Reproduction of Rights Managed Content outside the scope of any licence granted to You within five (5) days of becoming aware of such use or Reproduction.

## 7. WARRANTIES AND LIABILITY

- 7.1 CM warrants that:
- 7.1.1 it is free to enter into the Contract;
- 7.1.2 it will use reasonable skill and care to provide the Service; and
- 7.1.3 it has used reasonable endeavours to ensure that, subject to Your complying with the terms of the Contract, the use by You of the Service and the Rights Managed Content will not infringe the copyright, database

or other rights in the Territory of any other person.

- 7.2 The Service and the Rights Managed Content are provided by CM on an "As Is" and "As Available" basis. CM uses its reasonable endeavours to ensure that the Service is provided on a continuous basis but CM does not warrant that the Service will be uninterrupted or free from error.
- 7.3 CM shall not be liable for any interruptions, faults, interferences, delays, errors or omissions of any kind in or to the Service or the Rights Managed Content or for any loss or damage (whether direct, indirect or consequential) sustained by You or Your customers or clients arising from:
- 7.3.1 any failure of Your computer hardware and software, networking, telecommunications systems, or other facilities;
- 7.3.2 any requests for Rights Managed Content or instructions supplied by You which are incomplete, incorrect, inaccurate, illegible, out of sequence, or in the wrong form, or arising from their late arrival or non-arrival or any other fault of You; or
- 7.3.3 any cause beyond the reasonable control of CM.
- 7.4 CM shall have no liability to You if the Service is used otherwise than in accordance with these Terms.
- 7.5 Despite CM's efforts to provide accurate information, the Site may contain inaccuracies or typographical errors. You acknowledge that the Service and the Rights Managed Content is derived from a number of sources including content licensed from Rights Holders and that use of the Service and the Rights Managed Content requires skill, expertise and judgement on Your part. Any representation, warranty or condition whatsoever as to the quality or fitness for a particular purpose of the Service or that the Rights Managed Content is up to date, complete or accurate, is expressly excluded, and CM shall have no liability or responsibility for any action or inaction on Your part or on that of any other party including without limitation any of Your customers or clients which is based (either in whole or in part) on the Service or the Rights Managed Content.
- 7.6 To the fullest extent permitted by applicable laws, and except in respect of death or personal injury arising from CM's negligence, CM and its directors, employees, agents or members, hereby exclude all liability to You (whether arising in contract or tort including negligence or breach of any statutory duty or otherwise) for any loss of profits, loss of

revenue, loss of data, or loss of contracts, or for any indirect, incidental or consequential loss or damage of any kind whatsoever with respect to the Service and the Rights Managed Content, whether or not the possibility of such loss or damage has been notified to CM.

- 7.7 In any event CM's total liability to You (whether arising in contract or tort including negligence or breach of any statutory duty or otherwise) howsoever arising under or in connection with the Contract or the provision or non-provision of any Rights Managed Content shall not exceed in aggregate the sum of £1,000,000 per claim.
- 7.8 In no event will You have any claim against any of CM's Rights Holders in relation to the Service or the Rights Managed Content.
- 7.9 You acknowledge that the provisions of the Contract including the foregoing limitations and exclusions of liability are reasonable in all the circumstances.

## **8. TERMINATION**

- 8.1 The term of the Contract shall commence on the Effective Date and shall continue until terminated in accordance with the following provisions.
- 8.2 CM may terminate the Contract and the provision of the Service at any time by giving not less than seven (7) days' written notice to You.
- 8.3 You may forthwith terminate the Contract at any time by giving written notice to CM.
- 8.4 CM may forthwith terminate the Contract by giving written notice to You if You cease to be, in CM's absolute discretion, qualified to use the Service, or if You commit any material or persistent breach of the Contract, or if You become bankrupt or insolvent, make a compulsory or voluntary arrangement with Your creditors, have a receiver, administrative receiver, administrator or similar official appointed, or if You are made subject to a winding up order, or go into liquidation, or undergo any similar procedure under any applicable law.
- 8.5 On termination of the Contract for any reason:
- 8.5.1 CM will cease to provide the Service to You; and
- 8.5.2 You will remain liable for any Fees and other sums that have fallen due and remain unpaid.

**9. MISCELLANEOUS**

- 9.1 CM may assign its rights under the Contract to any person and upon any such assignment CM will be relieved of any further obligation under the Contract, but the Contract is personal to You and may not be assigned by You.
- 9.2 Nothing in the Contract shall constitute or be deemed to constitute a partnership between CM and You or create or be deemed to create a relationship of principal and agent between CM and You.
- 9.3 CM's failure to exercise any particular right or provision of these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by CM to You in writing.
- 9.4 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to rely upon or enforce any term of the Contract, except as provided in clauses 7.1, 7.2 and 8.8.
- 9.5 The Contract shall be construed in accordance with and governed by the laws of England and Wales. You irrevocably agree to submit to the exclusive jurisdiction of the English Courts, and waive any right to object to that jurisdiction on the grounds that it is an inconvenient forum or otherwise, but for the benefit of CM, it is agreed that CM may take legal proceedings in any appropriate jurisdiction.
- 9.6 The Contract (together with the details of the Service on the Site and any Term Sheet issued to You) contains the entire agreement between the parties with respect to its subject matter, to the exclusion of any other terms or conditions which You may put forward, and may not be modified except by an instrument in writing signed by the duly authorised representatives of CM and You.
- 9.7 In the event of any conflict between any term of the Contract and a Term Sheet the provisions of the Term Sheet shall prevail.
- 9.8 You acknowledge that, in entering into the Contract, You do not do so in consideration of or in reliance on any representation, warranty or other provision except as expressly provided in the Contract and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in the Contract shall affect the liability of either party for fraudulent misrepresentation.
- 9.9 If any provision of the Contract is held by any Court or other competent authority to be invalid or unenforceable in whole or in part, the Contract shall continue to be valid as to

its other provisions and the remainder of the affected provision.

- 9.10 Any notice to be given under the Contract shall be in the English language and sent by personal delivery, first class post, email (registrations@chillimedia.com) or fax to CM at its registered office, or to You at the address given by You as part of the registration process, unless a change of such address has been notified in writing to CM or You as appropriate.
- 9.11 Notices sent by personal delivery or fax will be deemed received no later than the time of delivery or transmission and notices sent by registered post shall be deemed received on the second working day following despatch, Saturdays, Sundays and Public Holidays in the UK in each case excepted. A notice will not be valid if given by text message or similar means.