
STANDARD SERVICE TERMS AND CONDITIONS

BACKGROUND:

D10 Limited, trading as Profitab.ly, (the “Service Provider”) provides Google Ads™ bid optimization services, and related software services, to business clients. The Service Provider has reasonable skill, knowledge and experience in that field. These Terms and Conditions shall apply to the provision of services by the Service Provider to its clients.

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“ Agreement ”	means the agreement entered into by the Service Provider and the Client incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;
“ Business Day ”	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in the United Kingdom;
“ Client ”	means the party procuring the Services from the Service Provider;
“ Commencement Date ”	means the date on which provision of the Services will commence, as defined in the Agreement;
“ Fees ”	means any and all sums due under the Agreement from the Client to the Service Provider, as specified in the Agreement;
“ Services ”	means the services to be provided by the Service Provider to the Client in accordance with Clause 2 of the Agreement, as fully defined in the Agreement, and subject to the terms and conditions of the Agreement;
“ Service Provider ”	D10 Limited trading as Profitab.ly, 19 Royal Victoria Park, Bristol, BS10 6TD, United Kingdom;
“ Site ”	the Service Provider's website or web app (at internet domain profitab.ly or any of its sub-domains), or software (which may be in the form of an app for a computer, smartphone or other device) provided by the Service Provider with any features similar to the website or web app; and
“ Term ”	means the term of the Agreement as defined therein.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

- 1.2.3 "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
- 1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and
- 1.2.5 a "Party" or the "Parties" refer to the parties to the Agreement.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

2. Provision of the Services

- 2.1 With effect from the Commencement Date, the Service Provider shall, throughout the Term of the Agreement, provide the Services to the Client.
- 2.2 The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the online advertising sector in the United Kingdom.
- 2.3 The Service Provider shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in the Agreement.
- 2.4 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.

3. Client's Obligations

- 3.1 The Client shall comply with any and all instructions provided by the Service Provider relating to the Services.
- 3.2 The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services.
- 3.3 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 3.4 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 3.5 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 3 of the Agreement shall not be

the responsibility or fault of the Service Provider.

4. Fees and Payment

- 4.1 The Client shall pay the Fees to the Service Provider in accordance with the payment terms available on the Site at the relevant time. Unless otherwise expressly stated, all prices are exclusive of any value added tax.
- 4.2 The Service Provider shall make available within the Site an electronic receipted invoice to the Client upon receipt by the Service Provider of the relevant payment.
- 4.3 If the Client fails to pay any amount payable by it under the Agreement then the Service Provider reserves the right to restrict access to the Services until payment is made.
- 4.4 All payments required to be made pursuant to the Agreement by either Party shall be made in United Kingdom Pounds Sterling, United States Dollars or Euro Area Euros in cleared funds to such bank or payment handler as the receiving Party may from time to time nominate.
- 4.5 Within the Site there is means for the Client to give details of a credit card or debit card (herein referred to as a Card) for the purpose of making payments pursuant to the Agreement. For any Card so given, the Client hereby authorizes the Service Provider to initiate a series of payments from the Card on the Client's behalf pursuant to the Agreement. It is anticipated that such a series of payments will be taken at monthly intervals for the Fee amounts as they occur.
- 4.6 No refund of any Fees shall be given under any circumstances.

5. Intellectual Property Rights

- 5.1 For the purposes of the Agreement references to the "Intellectual Property Rights" shall mean all patents, rights to inventions, copyright and related rights, trade marks and trade names, rights to goodwill or to sue for passing off, rights in designs, database rights, rights in confidential information (including without limitation know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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.
- 5.2 The Client acknowledges and agrees that all Intellectual Property Rights existing or arising in any materials, know-how, specifications, inventions, processes, software, data or information supplied by the Service Provider under or in connection with the Agreement shall at all times belong to and remain vested in the Service Provider or its licensors and, save as expressly provided hereunder, no proprietary rights or any other rights whatsoever are assigned, granted or shall pass to the Client.

6. **Liability and Indemnity**

- 6.1 In the event that the Service Provider fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 6.2 The Service Provider's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall not exceed in any year the sum of the Fees paid by the Client from the 12 month period preceding the date when the claim arose.
- 6.3 The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider.
- 6.4 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude the Service Provider's liability for death or personal injury.
- 6.5 Subject to clause 6.2, the Service Provider shall not be liable to the Client for any loss of profits or goodwill or any other type of special, indirect or consequential loss or revenue of any nature whatsoever (including loss or damages suffered as a result of an action brought by a third party) whether arising from negligence, breach of contract or otherwise, even if such a loss was reasonably foreseeable or the Service Provider had been advised of the possibility of the Client incurring the same, and such liability is hereby excluded to the fullest extent permitted by law.
- 6.6 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.
- 6.7 The Client agrees that all the limitations and exclusions of liability in favour of the Service Provider in the Agreement are reasonable in the circumstances under which the Services are to be performed.

7. **Confidentiality**

- 7.1 The parties recognise that under this Agreement they may receive each other's trade secrets and/or confidential or proprietary information of the other party. All information belonging to or relating to a party including without limitation information concerning business plans, customers, supplies, services, intellectual property and/or financial results received by the other party as a result of entering into or performing the Agreement which is designated as confidential by the disclosing party or is otherwise clearly confidential in nature constitutes "confidential information".
- 7.2 Each party agrees not to use confidential information for any purpose other than the purpose for which it is supplied under the Agreement and agrees not to divulge confidential information received from the other party to any of its employees who do not need to know it, and to prevent its disclosure to or access by any third party without the prior written consent of the disclosing party except to its professional advisers or as may be required by law or any legal or regulatory authority.

7.3 Each party will use a reasonable degree of care which in any event will not be less than the same degree of care which the receiving party uses to protect its own confidential information to keep and ensure its employees and agents keep any and all such information confidential. This obligation will survive the termination of the Agreement, in respect of a particular item of confidential information, until such earlier time as that item of confidential information reaches the public domain other than through the receiving party's own default.

8. Client's Intellectual Property Rights

8.1 Subject to Clause 8.2, the Client agrees that the Service Provider may use the Client's logo, name and trade marks in connection with the Service Provider's advertising and marketing materials but only in accordance with clause 8.2.

8.2 The Service Provider shall submit all advertising and marketing materials which incorporate the Client's logo, name and/or trade marks to the Client before publication. The Client shall have a period of seven (7) business days commencing on the date on which the Service Provider sends the materials in which to notify the Service Provider as to whether the Client approves or disapproves the materials, such approval not to be unreasonably withheld or delayed. If the Client does not communicate its approval or disapproval to the Service Provider with such seven day period, the Client shall be deemed to have approved the materials.

9. Force Majeure

No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

10. Term

The Agreement takes effect from the date the Client begins using the Services (the Commencement Date) and subject to clause 11 (Termination) shall continue in effect for the duration of the Client's use of the Services.

11. Termination

11.1 Either Party may terminate the Agreement by giving to the other not less than 2 Business Days written notice.

11.2 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

- 11.2.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 5 Business Days of the due date for payment;
 - 11.2.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 5 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 11.2.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 11.2.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 11.2.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
 - 11.2.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party; or
 - 11.2.7 the other Party ceases, or threatens to cease, to carry on business.
- 11.3 For the purposes of sub-Clause 11.2.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 11.4 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

12. **Effects of Termination**

Upon the termination of the Agreement for any reason:

- 12.1 the Service Provider shall cease to make the Services available to the Client.
- 12.2 at or after termination of the Agreement, no sum of money (including, but not limited to, Fees or refunds) shall be owed, due or payable by either Party to the other;
- 12.3 in accordance with sub-Clause 12.2, at or after termination of the Agreement the Service Provider will not invoice the Client for any further Fees, or request, or take, any further payments from the Client;
- 12.4 in accordance with sub-Clause 12.2, at or after termination of the Agreement the Client will not invoice the Service Provider for any sum, for any reason, or request, or take, any payments from the Service Provider;
- 12.5 for the avoidance of doubt, and in accordance with sub-Clauses 4.6, 12.2 and 12.4, the Client will not request or expect from the Service Provider any refund (in full or in part) of any Fees that were invoiced or paid before the termination of the Agreement;

- 12.6 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 12.7 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
- 12.8 subject as provided in Clause 12 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 12.9 each Party shall (except to the extent referred to in Clause 7 of the Agreement) immediately cease to use, either directly or indirectly, any confidential information, and shall immediately return to the other Party any documents in its possession or control which contain or record any confidential information.

13. **Warranties**

- 13.1 The Service Provider warrants that it has all the requisite power and authority to execute, deliver and perform its obligations under the Agreement.
- 13.2 The Client warrants that it shall comply with all applicable laws and regulations relating to the Services and with all applicable rules, regulations and guidelines (whether or not having the force of law) of any regulatory organisations or bodies of which it is a member or by which it is bound and it has all requisite power and authority to execute, deliver and perform its obligations under the Agreement.
- 13.3 The Service Provider does not warrant that the Services will meet the Client's requirements nor that the Services provided through the Site will be error-free or uninterrupted.
- 13.4 The Services are provided on an "as is" basis. Save as expressly set out in the Agreement, all conditions, representations, warranties, undertakings or terms whether express or implied, statutory or otherwise, including in particular any implied warranty of satisfactory quality or fitness for any particular purpose or use are excluded from the Agreement to the fullest extent permitted by law.
- 13.5 The Client confirms that neither the Service Provider nor any of its representatives has made any claims or representations of guaranteed or anticipated profits that may result from the use of the Services and the Service Provider expressly disclaims liability for any profit projections which may have been provided to the Client.

14. **No Waiver**

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

15. **Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

16. **Costs**

Subject to any provisions to the contrary each Party shall pay its own costs of, and incidental to, the negotiation, preparation, execution and carrying into effect of the Agreement.

17. **Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

18. **Assignment and Sub-Contracting**

18.1 Subject to sub-Clause 18.2 the Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

18.2 The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Service Provider.

19. **Relationship of the Parties**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

20. **Third Party Rights**

20.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

20.2 Subject to Clause 20 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

21. **Notices**

21.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

21.2 Notices shall be deemed to have been duly given:

21.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

21.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or

21.2.3 on the fifth Business Day following mailing, if mailed by national ordinary mail, postage prepaid; or

21.2.4 on the tenth Business Day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address or e-mail address notified to the other Party.

22. **Entire Agreement**

22.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

22.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

23. **Counterparts**

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

24. **Severance**

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

25. **Dispute Resolution**

25.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who

have the authority to settle such disputes.

- 25.2 Nothing in Clause 25 of the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 25.3 The decision and outcome of the final method of dispute resolution under Clause 25 of the Agreement shall be final and binding on both Parties.

26. **Changes to the Agreement**

The Service Provider may change this Agreement from time to time at its absolute discretion without prior notice to the Client. The Client agrees that such changes will be binding on it. Any changes will be posted on the Service Provider's Site and will amend and form part of this Agreement. The Client is responsible for reviewing the Service Provider's Site on a regular basis to obtain timely notice of any such changes.

27. **Law and Jurisdiction**

- 27.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 27.2 Subject to the provisions of Clause 25 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.