

# ADIKAT STANDARD TERMS OF BUSINESS

## 1 DEFINITIONS

- 1.1 In this Agreement the following terms shall have the following meanings:
- 1.1.1 **"Authorised Partner"** means an authorised reseller of ADIKAT's Tags and Services, who has entered into an authorised partner agreement with ADIKAT and is identified as an Authorised Partner in the Statement of Work;
- 1.1.2 **"Brand"** means the Hypertag registered trade mark;
- 1.1.3 **"Campaign"** means the campaign, event or promotion to be run by the Customer, using the ADIKAT service;
- 1.1.4 **"Campaign Dates"** means the period commencing on the date of signature of this Agreement, and ending at midnight on the date specified in the Statement of Work;
- 1.1.5 **"Confidential Information"** means all information in respect of the business of the parties including, without limitation, any ideas; business methods; finance; customer lists or details; computer systems and software; products or services, including but not limited to know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by each party, and any other information which, if disclosed, will be liable to cause harm to a party to this Agreement;
- 1.1.6 **"Content"** means the content to be distributed via the Tags;
- 1.1.7 **"Content Services"** means the formatting, encryption and content distribution services provided to the Customer, as set out in Section 4 of the Statement of Work;
- 1.1.8 **"Customer"** means the customer (who may be an Authorised Partner) described in the Statement of Work;
- 1.1.9 **"Fees"** means the Fees payable by the Customer for the hire of the Tags, and the provision of the Services, as set out in the Quotation;
- 1.1.10 **"Fixed Tags"** means the fixed tags provided to the Customer as set out in Section 1 of the Statement of Work;
- 1.1.11 **"ADIKAT"** means ADIKAT Limited, whose registered office is located at 13 Upper Baggot St, Second Floor, Dublin 4, Ireland and whose Irish registered number is 368534;
- 1.1.12 **"Location"** means the location of the Campaign as specified in the Statement of Work;
- 1.1.13 **"Log Files"** means the electronic files forming a record of the number of downloads from each Tag;
- 1.1.14 **"Network Management Services"** means ADIKAT's management of a network of Tags, including uploading new Content to the Tags as set out in Section 7 of the Statement of Work;
- 1.1.15 **"Project Costs"** means the fee payable for the Project Services, the installation of the Fixed Tags and any training services provided by ADIKAT as set out in the Statement of Work;
- 1.1.16 **"Project Services"** means the provision of training services, and/or the installation of the Fixed Tags, as set out in Section 7 of the Statement of Work;
- 1.1.17 **"Quotation"** means the written quotation, supplied to the Customer by ADIKAT, listing the Fees;
- 1.1.18 **"Statement of Work"** means the attached statement of work, describing the Campaign, and listing the Tags services to be provided to the Customer by ADIKAT;
- 1.1.19 **"Tags"** means the ADIKAT tags, whether Fixed Tags or Wearable Tags;
- 1.1.20 **"Usage Report"** means a report setting out the number of downloads from each Tag, during the Campaign;
- 1.1.21 **"Usage Snapshot"** means a truncated version of the Usage Report;
- 1.1.22 **"Wearable Tags"** means the wearable Tags provided to the Customer as set out in Section 1 of the Statement of Work.
- 1.2 The Statement of Work and, to the extent it refers to the Fees, the Quotation form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement.

## 2 THIS AGREEMENT

- 2.1 Subject to any variation under clause 2.3 this Agreement shall be on these conditions to the exclusion of all other terms and conditions.
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Agreement simply as a result of such document being referred to in the Agreement.
- 2.3 This Agreement applies to all ADIKAT's sales and any variation to this Agreement shall have no effect unless expressly agreed in writing and signed by an authorised representative of ADIKAT.
- 2.4 The Customer's acceptance of the Statement of Work shall be deemed to be an offer by the Customer to acquire Tags and services subject to the terms of this Agreement.
- 2.5 The Customer shall ensure that the terms of the Statement of Work are a complete and accurate description of the Tags and services to be provided subject to the terms and condition prior to acceptance of the Statement of Work.
- 2.6 Any quotation is given on the basis that no Agreement shall come into existence until ADIKAT receives confirmation of agreement to the Statement of Work from the Customer. Any quotation is valid for a period of 30 days only from its date, provided that ADIKAT has not previously withdrawn it.

## 3 THE SERVICE

- 3.1 In consideration of the payment of the Fees and subject to the terms of this Agreement ADIKAT will:
- 3.1.1 deliver the number of Tags specified in the Statement of Work to the Customer;
- 3.1.2 provide the Content Services;
- 3.1.3 provide the Usage Report;
- 3.1.4 provide the Network Management Services; and
- 3.1.5 where applicable, provide the Project Services.

## 4 TAGS AND CONTENT

- 4.1 Prior to the delivery date for the Tags, the Customer will ensure that:
- 4.1.1 the Locations are a safe operating environment for the Tags;
- 4.1.2 ADIKAT (and its agents or subcontractors) has the relevant rights of access to the Locations for the

purpose of installing the Fixed Tags; and

- 4.1.3 the Locations have sufficient power and infrastructure for the installation and operation of the Fixed Tags.
- 4.2 ADIKAT (or its agents or sub-contractors) will use its reasonable endeavours to supply and install the Tags by the date set out in the Statement of Work.
- 4.3 ADIKAT will either sell or loan the Tags to the Customer for the term of this Agreement. Where the tags are rented, the Tags will remain the sole and exclusive property of ADIKAT and the Customer will have no right or interest in the Tags except for quiet possession and the right to use the Tags in accordance with the terms of this Agreement. Risk in the Tags will pass to the Customer upon delivery of the Tags to the Location, and the Customer will be responsible for ensuring that the Tags are insured for their full replacement value against loss or damage resulting from any cause, and hereby agrees to reimburse ADIKAT for the full replacement value of Tags which are lost or damaged whilst in the Customer's possession.
- 4.4 In relation to the loan of the Tags, the Customer will:
- 4.4.1 not (unless otherwise agreed with ADIKAT) sell, assign, sub-let, pledge, create a mortgage, legal charge or part with possession or control of or otherwise deal with the Tags or any interest therein;
- 4.4.2 not change, remove or obscure any labels, plates, lettering, Brand or other markings which are on the Tags at the time of installation or which may be placed on the Tags by the Customer following installation;
- 4.4.3 do all things reasonably necessary to protect and defend ADIKAT's ownership of the Tags and shall use all reasonable endeavours to keep the Tags free from distress, execution or any other legal process, and shall immediately notify ADIKAT of any claim or threatened claim to the Tags by any third party; and
- 4.4.4 not move the Tags from the Location without the prior written consent of ADIKAT.
- 4.5 Where specified in the Statement of Work, the Customer will provide ADIKAT with the source content by the due date in the format notified to the Customer by ADIKAT. Provided that ADIKAT is not prohibited from carrying out the Content Services by any technical or contractual restriction, ADIKAT will use its reasonable endeavours to carry out the Content Services. The rights, title and interest in the copyright, design right or other intellectual property rights in the Content will remain the property of ADIKAT, and nothing in this Agreement shall be construed as an assignment or transfer of any such intellectual property rights. The Content will be preloaded onto the Tags (or server if specified in the Statement of Work) prior to delivery.
- 4.6 Any failure by the Customer to provide the source content by the due date will result in additional charges being incurred by the Customer.
- 4.7 If the Customer does not provide the source content for the Tags by the due date, ADIKAT reserves the right to develop the Content, to the Customer's specification, on a time and materials basis in accordance with its then current rates.
- 4.8 Where Tags are being provided to an Authorised Partner, and the Content is to be preloaded onto a server, the Authorised Partner hereby confirms that the Log Files will be uploaded to the server by the deadline specified in the Statement of Work. ADIKAT will provide the Usage Report by the later of: (i) the date specified in the Statement of Work; or (ii) if the Log Files are not uploaded by the deadline, 2 weeks from the date that the Log Files are uploaded to the server.
- 4.9 Where the Customer is an Authorised Partner, the Authorised Partner hereby undertakes that the Content shall only be used in conjunction with the number of Tags specified in the Statement of Work.
- 4.10 The Customer acknowledges that Hypertag is the owner of the Brand and that the Customer may only use the Brand with the prior written consent of ADIKAT. Where agreed with ADIKAT, the Customer will use the Brand on all Campaign specific Customer literature and promotional material, with a statement that the Brand "is a trademark of Hypertag Limited".
- 4.11 ADIKAT is opposed to sexism, racism, homophobia, persecution, human rights abuses and blackmail. Consequently, the Tags may not be used to distribute any Content which ADIKAT reasonably believes:
- 4.11.1 to be offensive, abusive, defamatory, indecent, obscene or menacing;
- 4.11.2 to support, or be in connection with a criminal offence;
- 4.11.3 contravenes legislation, laws, regulations or third party rights.
- 4.12 Specifically, ADIKAT will refuse to distribute Content falling into any of the below categories:
- 4.12.1 Illegal drugs, and drugs paraphernalia;
- 4.12.2 The promotion of any of the following: fake identification documentation (including passports), prostitution, pornography, tobacco or tobacco related products, or the direct promotion of weapons; or
- 4.12.3 Gambling where the promotion of gambling to the Customer's target market would contravene legislation or regulatory body guidance.
- 4.13 Where the Customer wishes to distribute content falling into the categories below, it shall first submit such source content to ADIKAT, for ADIKAT's approval:
- 4.13.1 Content promoting or demonstrating violence;
- 4.13.2 Content showing adult content; or
- 4.13.3 Content with political or religious content.
- 4.14 ADIKAT reserves the right to refuse to distribute Content, which it reasonably believes does not provide a compelling consumer offering.

## 5 NETWORK MANAGEMENT

- 5.1 Where specified in a Statement of Work, ADIKAT will manage a network of interconnected Tags on behalf of the Customer. This Network Management Service will include the periodic uploading of Content to the Tags (or server) as agreed between the Customer and ADIKAT from time to time.

## 6 CUSTOMER'S RESPONSIBILITIES

- 6.1 The Customer will obtain all necessary permissions required by the Customer in order to run the Campaign.
- 6.2 The Customer will comply with all deadlines specified in the Statement of Work, or as agreed between the parties from time to time. To the extent that any failure of the Customer to meet such deadlines affects ADIKAT's ability to meet its obligations under this Agreement, ADIKAT shall not be considered in breach of its obligations under this Agreement. With regard to content, ADIKAT shall be entitled to charge the Customer a fee of €30 for each complete period of 60 minutes that the Customer fails to comply with such deadline, or part thereof. With regard to the return of tags, which have ended their hire period and are overdue, a fee of €60 per tag will be charged for each day or part thereof until the tags have been received by ADIKAT. The parties agree that these charges are a genuine pre-estimate of the loss ADIKAT will suffer in the event that the Customer misses a deadline.

- 6.3 Any additional expense to ADIKAT resulting from such delay shall be added to the Service Fee and the project time-scales shall be extended accordingly
- 6.4 The Customer will provide ADIKAT with such co-operation and support in relation to the Campaign as is reasonably necessary to ensure the success of the Campaign, including but not limited to:
- 6.4.1 a reasonable level of responsiveness to ADIKAT's requirements and communications;
- 6.4.2 the timely release of appropriate and accurate information required by ADIKAT;
- 6.4.3 the prompt review of work carried out by ADIKAT;
- 6.4.4 where reasonably required by ADIKAT, making personnel and facilities available to ADIKAT, including contact details of key personnel, at the Locations.

## 7 PRICE AND PAYMENT TERMS

- 7.1 Unless otherwise agreed in the Statement of Work, ADIKAT will invoice the Customer for 50% of the Fees and the Project Costs upon ADIKAT's acceptance of the Customer's order. The final 50% will be invoiced on the first day of the Campaign. Any additional Project Costs incurred will be charged on a time and materials basis in accordance with ADIKAT's then current rates, and invoiced monthly in arrears at the end of the month in which they occur.
- 7.2 Where the Customer is an Authorised Partner, ADIKAT will invoice the Authorised Partner as follows:
- 7.2.1 100% of the stock and project costs 30 days after the date of invoice; and
- 7.2.2 100% of the Fees payable 30 days after the date on which the Content is placed on the content server.
- 7.3 The Customer will pay the Fees and any Project Costs to ADIKAT within 30 days of the date of the relevant invoice.
- 7.4 All Fees in this Agreement are exclusive of value added tax (where applicable), which shall be paid at the rate and in the manner for the time being prescribed by law.
- 7.5 The Statement of Work will identify the level of credit available to the Customer. ADIKAT will notify the Customer when the aggregate amount of outstanding Fees and Project Costs totals 90% of the agreed credit limit. ADIKAT shall be entitled to suspend all services where the agreed credit limit has been reached, until such time as all outstanding invoices have been settled.
- 7.6 If the Customer fails to pay any amount payable by it under this Agreement, ADIKAT shall be entitled, but not obliged, to:
- 7.6.1 charge the Customer interest on the overdue amount, payable by the Customer immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% per annum above the base rate for the time being of European Central Bank;
- 7.6.2 suspend all services until payment has been made in full; or
- 7.6.3 terminate this Agreement immediately upon notice in writing.
- 7.7 All invoices are to be paid in full without set-off, deduction or other withholding of any amount, which may be due to ADIKAT. Should Customer be required by any law or regulation to make any deduction on account of tax or otherwise on any sum payable under this Agreement, the sum payable will be increased by the amount of such tax to ensure that ADIKAT receives a sum equal to the amount to be paid under this Agreement.
- 7.8 Where the Customer is an Authorised Partner, the Authorised Partner shall be responsible for the collection, remittance and payment of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, sale, lease or other distribution of the Tags in the Authorised Partner's territory.

## 8 WARRANTY

- 8.1 ADIKAT warrants that:
- 8.1.1 for the duration of the Project, or for a period of 12 months (whichever is shorter) the Tags will be free from material defects in materials and workmanship;
- 8.1.2 where the Customer is not an Authorised Partner, the Tags will be installed in accordance with the Tags' instructions;
- 8.1.3 the Content Services and Project Services will be provided with reasonable care and skill, and in accordance with all applicable laws.
- 8.2 ADIKAT does not give any warranty that the Tags are fit for any particular purpose unless the Customer has advised ADIKAT of that particular purpose, and ADIKAT has confirmed in writing that the Tags will fulfil that particular purpose.
- 8.3 ADIKAT excludes to the fullest extent permitted by law, all other conditions, warranties, representations, or other terms relating to this Agreement including any conditions, warranties, representations or other terms that might otherwise be implied or incorporated into this Agreement.
- 8.4 Customer's remedies for any breach of the warranties set out in clause 8.1 above will be:
- 8.4.1 the repair of the Tags, or the re-performance of the Content Services or the Project Services, as applicable;
- 8.4.2 the replacement of the Tags as soon as reasonably practicable; or
- 8.4.3 the provision of a workaround whilst the Tags are out of operation.
- 8.5 The remedies set out in clause 8.4 above shall be Customer's sole remedy for breach of the warranties set out in clause 8.1 above.

## 9 LIABILITY

- 9.1 ADIKAT does not limit its liability (if any) to the Customer:
- 9.1.1 for personal injury or death resulting from ADIKAT's negligence;
- 9.1.2 for any matter which it would be illegal for ADIKAT to exclude or to attempt to exclude its liability; or
- 9.1.3 for fraud.
- 9.2 Subject to clause 9.1 neither party will be liable to the other under this Agreement or in tort for any damages resulting from: (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) lost profits, (iv) loss of anticipated savings, (v) loss of revenue, (vi) loss of opportunity, (vii) loss of goodwill, (viii) loss of reputation, and/or (ix) any indirect or consequential loss. Such liability is excluded whether or not such damages were reasonably foreseeable or actually foreseen.
- 9.3 Subject to clauses 9.1 and 9.2, ADIKAT's aggregate liability under or arising out of this Agreement whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any damage or loss howsoever caused (other than for death or personal injury caused by ADIKAT's negligence) will not exceed an amount equivalent to 125% of the Fees paid and payable to ADIKAT under this Agreement.
- 9.4 If the Customer's failure to comply, or delay in complying, with any obligation under this Agreement causes ADIKAT to fail to comply with any of its obligations under this Agreement, then such failure by ADIKAT to comply shall not constitute a breach of the provisions of this Agreement by ADIKAT.

## 10 TERM AND TERMINATION

- 10.1 This Agreement will commence on ADIKAT's acceptance of the Customer's order and shall continue in full force and effect until the end of the Campaign, unless otherwise agreed between the parties in writing.
- 10.2 Either party may terminate this Agreement immediately, by serving written notice on the other party, if the other party:
- 10.2.1 is in material breach of this Agreement and, where the breach is capable of remedy, the other party fails to remedy such breach within 30 days of a written request from the party not in breach;
- 10.2.2 summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any Court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under section 425 Companies Act 1985, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person or is the subject of a notice to strike off the register at Companies House;
- 10.2.3 has any restraint, execution or other process levied or enforced on any of its property;
- 10.2.4 ceases, or appears in the reasonable opinion of the party wishing to terminate, likely to or is threatening to cease to trade.
- 10.3 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination.
- 10.4 On termination of this Agreement howsoever arising:
- 10.4.1 each party will return to the other any documents in its possession or control which contains or records any of the Confidential Information of the other party;
- 10.4.2 the Customer shall return all Tags to ADIKAT by the date specified in the Statement of Work, at its cost;
- 10.4.3 any licence to use the Content or other materials provided to the Customer under this Agreement will terminate.
- 10.5 Where the Customer fails to comply with the provisions of clause 10.4.2 above, ADIKAT reserves the right, upon notice, to access the Locations for the purposes of recovering the Tags.
- 10.6 The parties expressly agree that the following clauses will survive termination of this Agreement, howsoever arising: clause 1, 6, 8, 10, 12, 13.

## 11 FORCE MAJEURE

- 11.1 Neither party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond its control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion. For the avoidance of doubt, nothing in this clause 11 shall excuse Customer from any payment obligations under this Agreement.

## 12 CONFIDENTIALITY AND PUBLICITY

- 12.1 Each Party agrees:
- 12.1.1 to maintain as confidential and not to use or disclose to any third party any Confidential Information derived from the other party without the consent of the disclosing party except where such use or disclosure is that which is reasonably necessary for the proper performance of this Agreement and the Confidential Information is disclosed subject to an obligation of confidentiality on the part of the third party;
- 12.1.2 to make all relevant officers, employees agents and sub-contractors aware of the confidentiality of the Confidential Information and the provisions of this clause 12, including taking all such steps as will from time to time be reasonably necessary to ensure compliance by its officers, employees, agents and sub-contractors with the provisions of this clause 12.
- 12.2 The obligations in this clause 12 will continue in full force and effect during the term of and for five (5) years following the termination or expiration of this Agreement, provided, however, the following will not be subject to such restrictions:
- 12.2.1 any information which was lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;
- 12.2.2 any information which is lawfully become part of the public domain;
- 12.2.3 any information which is otherwise lawfully available to one party from a source independent of the other party; or
- 12.2.4 any information the disclosure of which is required by applicable law, regulation, judicial order or other governmental authority.
- 12.3 Unless otherwise agreed with the Customer, ADIKAT reserves the right to publicise its involvement in the Campaign, and to include such parts of the Usage Report in its case studies as it deems necessary. The Customer hereby grants ADIKAT a non-exclusive, personal licence to reproduce its logo on the ADIKAT website.
- 12.4 Adikat is registered with the data protection agency. Registration no. 11625/A.

## 13 GENERAL

- 13.1 No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.
- 13.2 If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.
- 13.3 Any amendment, waiver or variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties.
- 13.4 No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.
- 13.5 Any notice required to be given pursuant to this Agreement shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this Agreement.
- 13.6 This Agreement, the Statement of Work and, to the extent it sets out the Fees, the Quotation, contain the whole agreement between the parties relating to the subject matter hereof, and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 13.7 This Agreement shall be governed by and construed in accordance with Irish law and each party hereby submits to the exclusive jurisdiction of the Irish courts.