

# Terms & Conditions

## Benchmark Ad (“The Company”)

Date:

2010

Parties:

- (1) Andrew Shepherd trading as Benchmark Ad [Address] (“the Company”, “We”, “Us”)
- (2) [Name and Address of Advertiser] (Company No: XXXXX) whose registered address is [ADDRESS] (“the Customer”, “You”,

### 1. Services

- 1.1 You appoint the Company as the exclusive provider of bench advertising for a period of [12 months/24 months/36 months] (“Term”) at the [NAME OF PUBLIC HOUSE] and continuing until the appointment is terminated by either party giving to the other at least 3 months’ written notice or otherwise in accordance with the provisions of this Agreement.
- 1.2 The Company shall endeavour to fit table plaques within 6 months of the date of this Agreement (“Install Date”) The Term shall commence from the Install Date.
- 1.3 Throughout the Term of this Agreement, the Company shall in good faith provide and carry out the following:
  - 1.3.1 fit an advertising plaque to an outdoor bench at the named Public House in Clause 1.1;
  - 1.3.2 maintain tables and plaques to a high standard by using environmentally friendly materials

### 2. Charges, fee payment and terms

- 2.1 You agree to pay the Company the fees in respect of supply and fitting the plaque such fees are payable by invoice dated the date the plaque is fitted
- 2.2 The Company shall submit to the Customer invoices for the total amount payable to the Company pursuant to this Agreement and such invoices shall be payable within thirty (30) days of the date of the invoice
- 2.3 Value added tax shall be payable by the Customer to the Company in respect of all payments pursuant to this Agreement on presentation of an appropriate VAT invoice.
- 2.4 If the Customer fails to pay the Company in accordance with this Agreement, the Customer shall also reimburse the Company for all reasonable expenses (including legal fees) incurred by the Company in collecting any unpaid amount together with default interest on late payments at a rate equal to 8%] per year above the base lending rate of Royal Bank of Scotland plc from time to time.

### 3. Warranties

- 3.1 The Customer warrants and undertakes that it will:
  - 3.1.1 Submit images, logos, proofs and content within agreed timeframes;
  - 3.1.2 warrant the accuracy of all information supplied in artwork, proofs and text;
  - 3.1.3 ensure that all content is respectable, honest and of an acceptable standard to be displayed in a public place;
  - 3.1.4 ensure that the content does not contain any explicit or obscene pictures or text,
  - 3.1.5 grants the Company the right to delete any inappropriate material;
  - 3.1.6 warrant that it has permission to use any names, logos, designs or wording;
  - 3.1.7 deal with any queries from the Company within a reasonable period of time, not exceeding 7 days;
  - 3.1.8 not remove any plaque from the Public House;
  - 3.1.9 notify the Company within 3 days of the occurrence of any of the following:
    - 3.1.9.1 the Customer ceases trading or plans a closure of the Customer’s business for a period exceeding 30 days;
    - 3.1.9.2 a change of the Customer’s ownership
    - 3.1.9.3 insolvency or bankruptcy
- 3.2 The Company undertakes and warrants that it will:
  - 3.2.1 replace each plaque on 2 (two occasions) should it become damaged or removed, solely at the discretion of the Company
  - 3.2.2 will maintain tables/benches in accordance with the manufacturers recommendations using appropriate staining products which are VOC (Volatile Organic Compounds) 2010 compliant. Full product details are available upon request.

### 4. Limitation of liability

4.1 The Company is not responsible for damage or theft of the bench and the plaque, subject to Clause 3.2.1, and in the case of theft is under no obligation to replace the bench at the Public House.

4.2 Neither party shall be liable to the other in contract, tort (including negligence) or otherwise for any direct or indirect loss of profits, business or anticipated savings, or for any indirect or consequential loss or damage whatsoever.

4.3 Nothing in this Agreement shall exclude or restrict either party's liability for fraud, death or personal injuries resulting from the negligence of that party or of its employees while acting in the course of their employment.

#### **5. Retention of Title**

Ownership of the plaques will at all times remain the property of the Company. Should the Public House become insolvent or be sold, the Company reserves the right to collect the plaques and will place this at another Public House for the duration of this Agreement

#### **6. Confidentiality**

6.1 The Company shall keep confidential all business, products or services information disclosed to it by the Customer under the terms of this Agreement together with the provisions of this Agreement.

6.2 The Company undertakes not to disclose such information to any third party without the prior written consent of the Customer unless required by law, regulatory authority or court order.

6.3 No announcements or press releases shall be made by either party in relation to the terms of this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld.

6.4 Notwithstanding the foregoing provisions, the Customer permits the Company to disclose to third parties the Company's involvement with the Customer in connection with the plaques on the terms and strictly in accordance with the provisions set out in this Agreement.

#### **7. Cancellation**

In the event, that you cancel this Agreement prior to the expiry of the Term the following will apply

7.1 Where you have signed this Agreement you agree to pay 50% of the cost of the plaque;

7.2 Where you have signed this Agreement and artwork has been submitted to the Company, you agree to pay 75% of the cost of the plaque:

7.3 Where the plaque has been fitted at the Public House, you agree to pay 100% of the cost of the plaque

#### **8. Termination**

8.1 This agreement shall continue for further periods of 12 months and unless terminated by three (3) months' written notice to the other party.

8.2 This Agreement will terminate automatically on the occurrence of any of the following:

8.3 Insolvency of either party;

8.4 Breach of any of the events in Clause 3.1

#### **9. Consequences of expiry/termination**

9.1 In the event of the expiry or earlier termination of this Agreement for whatever reason, the Company shall cease providing advertising and remove the plaque and the Customer will certify compliance with its obligations under this Agreement in relation to confidentiality.

9.2 In the event of expiry of the term or earlier termination of this Agreement, for whatever reason, all provisions intended to or capable of surviving termination shall survive and remain in force.

#### **10. Force majeure**

10.1 Except for the obligation to pay money properly due and owing either party shall be excused from any delay or failure in performance under this Agreement caused by reason of force majeure.

10.2 For the purposes of this clause "force majeure" means the occurrence of an event or contingency beyond the reasonable control of the relevant party including but not limited to failure of performance by the other party due to acts of God earthquake, power failure, labour disputes, riots, legal consents and governmental requirements.

10.3 The party whose performance is affected by the occurrence of the force majeure event shall give notice of such inability to perform to the other party with details of the event and likely duration.

10.4 If a party is excused performance of substantially all of its obligations under this Agreement for a continuous period of 6 months then the other party may at any time after such period terminate this Agreement.

#### **11. Miscellaneous**

11.1 **No Agency:** Nothing in this Agreement shall constitute any partnership, agency or agreement of employment between the parties.

- 11.2 **Intellectual Property Rights:** Except as expressly stated in this Agreement nothing in this Agreement shall grant or be deemed to grant either party any right, title or interest in any intellectual property rights owned by the other party and nothing in this Agreement shall entitle either party to use the other party's logos or trademarks or any other intellectual property rights in any way whatsoever without the prior written consent of the other party other than as provided for under this Agreement.
- 11.3 **Notice:** Notices given under this Agreement must be in writing and may be delivered by hand or by courier to the relevant party's address set out at the top of this Agreement or subsequently formally notified to the other party in writing with reference to this clause and Agreement.
- 11.4 **Variation:** Amendments to this Agreement (including any schedules added to this Agreement after the date of this Agreement) shall not be effective unless in writing and signed by authorised signatories on behalf of both parties.
- 11.5 **Waiver:** Neither party shall have been deemed to have waived any right under this Agreement by reason of or failure or delay in exercising a right.
- 11.6 **Entire Agreement:** This Agreement contains the whole Agreement between the parties relating to its subject matter and supersedes all previous written or oral agreements relating to it.
- 11.7 **Assignment:** The Company shall not be entitled to assign or transfer any right or obligation under this Agreement without the prior written consent of the Customer.
- 11.8 **Headings:** The headings to the clauses in this Agreement are for ease of reference only and shall not affect their interpretation.
- 11.9 **Severance:** If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable it may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The parties shall seek to amend such provision in such reasonable manner as achieves the intention of the parties without illegality.
- 11.10 **Further Assurance:** At any time after the date of this agreement each of the parties shall execute or procure the execution of such documents and do or procure the doing of such acts and things required for the purpose of giving the full benefit of all the provisions of this agreement.
- 11.11 **Third Party Rights:** No person who is not a party to this Agreement shall have any rights to enforce its provisions.

**12. Law and jurisdiction**

This Agreement shall be governed by and construed and interpreted in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English courts.

**SIGNED** by the parties on the date at the top of this Agreement.

**SIGNED** by .....

[a duly authorised officer for and on  
behalf of BenchmarkAd

**SIGNED** by .....

[a duly authorised officer for and on  
behalf of [CUSTOMER]]