

1. DEFINITIONS

In these Terms unless inconsistent with the context the following definitions will apply:

“Agreement” shall mean	the formal contract incorporating these Terms, setting out the exact amount of the Fee and any additional terms and conditions each taking priority over these Terms where a conflict arises.
“Client” shall mean	the company, firm, organisation or concern named in the body of the Agreement and shall include all associate companies of the Client.
“Commencement Date” shall mean	the date ContraSwap first provides the Services to the Client.
“ContraPoints” shall mean	the points allocated by ContraSwap and used by the Client under the terms of this Agreement.
“ContraSwap” shall mean	ContraSwap Limited.
“ContraSwapped” shall mean	the process by which an advertisement is printed in a magazine in consideration of the payment by the advertiser of ContraPoints.
“ContraSwap Programme” shall mean	the software programmes run on the Website to provide the Services.
“ContraSwap Signature” shall mean	the inclusion in each advertisement that is ContraSwapped of the word ContraSwap in the fold edge of the advertisement.
“Fee” shall mean	the subscription price of the Services payable by the Client as set out in the body of the Agreement.

“Intellectual Property Rights” shall mean patents, registered designs, trade marks and service marks (whether registered or not and including applications for any of the foregoing), copyright, design right, semiconductor topography rights, trading names, rights in and to software including source codes, rights in and to technical information and other confidential information and know-how, rights in and to databases and all other intellectual property rights and similar property rights of whatever nature subsisting in any part of the world.

“Service Hours” shall mean between the hours of 09.00 and 17.00 Monday to Friday but shall exclude Public Holidays.

“Services” shall mean the application of the ContraSwap Programme to provide a forum for the exchange of advertisements and ContraPoints between magazine publishers.

“Terms” shall mean these Terms and Conditions as varied from time to time.

“Website” shall mean <http://www.contraswap.com>.

2. APPLICATION

The Terms shall apply to every provision of the Services by ContraSwap. No variation of the Terms (whether in the body of the Agreement or not) shall be valid unless in writing signed by an authorised representative of each of the Client and ContraSwap. For the avoidance of doubt the Client’s own terms and conditions of Order shall not be incorporated into the Terms.

3. THE PROVISION OF SERVICES

- 3.1 ContraSwap will provide the Services on the Terms;
- 3.2 For the avoidance of doubt ContraSwap shall not be obliged to provide the Services until a formal Agreement has been signed by both Client and ContraSwap and in respect of the provision of Services from 1st April 2010 ContraSwap has received payment in respect of the first instalment of the Fee; Exceptionally and without obligation on its part ContraSwap may offer the Client a free trial of the Services on the terms of paragraph 3.6.

- 3.3 The Services shall be provided subject to paragraph 3.5 below 24 hours a day and the Website updated during Service Hours as further particularised in paragraph 5.1.2.
- 3.4 The parties agree that ContraSwap may use the name of the Client for its own promotional purposes.
- 3.5 ContraSwap shall not be liable for any break in transmission beyond its control nor for interruptions in the Services due to routine or emergency work upon its Server.
- 3.6 A free trial is subject to the following :-
- 3.6.1 it shall be determinable by ContraSwap at any time without notice;
- 3.6.2 during the period of the free trial the number of Client's operatives under paragraph 4.2.2 shall be as agreed and the Client's payment obligation under paragraph 4.2.4 shall not apply;
- 3.6.3 ContraSwap's obligations under paragraph 5 shall not apply.

4. CLIENT'S RESPONSIBILITIES AND WARRANTIES

- 4.1 Prior to the provision of the Services first being provided the Client will give ContraSwap :-
- 4.1.1 accurate circulation figures and to update such figures from time to time; and
- 4.1.2 the number of full pages of its magazine(s) available to be ContraSwapped to enable ContraSwap to calculate the number of ContraPoints to be allocated to the Client.
- 4.2 Whilst the Services are being provided the Client will:
- 4.2.1 use only skilled and competent operatives in consideration of the Services;
- 4.2.2 limit access to the ContraSwap Programme to that number of operatives permitted under the agreed Fee;
- 4.2.3 not carry out any unauthorised alteration adaptation or modification of the Programme;
- 4.2.4 promptly pay all sums due in respect of the Services and in the case of monthly subscriptions pay the instalments by direct debit;
- 4.2.5 keep its passwords and user names absolutely secret;
- 4.2.6 immediately advise ContraSwap should it become aware that unauthorised persons are accessing the Programme;
- 4.2.7 promptly publish any advertisement agreed to be ContraSwapped;

- 4.2.8 include in each advertisement which is ContraSwapped the ContraSwap Signature;
- 4.2.9 advise ContraSwap of each exchange to enable it to keep up the running account of ContraPoints and provide ContraSwap with a copy of each relevant magazine.

5. *CONTRASWAP'S RESPONSIBILITIES AND WARRANTIES*

5.1 ContraSwap will:

- 5.1.1 use reasonably competent staff in the performance of the Services and perform these with reasonable care and skill;
- 5.1.2 provide the Services 24 hours a day and update the Website as frequently as necessary during the Service Hours and as reasonably promptly as circumstances allow;
- 5.1.3 endeavour to correct any break in transmission or access to the Website which is within its control as quickly as reasonably practicable;
- 5.1.4 in the event that the Fee (or any part of it) includes VAT to provide the Client with a VAT invoice periodically in arrears following receipt of the relevant payment.

5.2 ContraSwap will additionally

- 5.2.1 procure that a running total of the ContraPoints of the Client and other magazine publishers who contract with Contraspw is kept up-to-date on the Website.
- 5.2.2 promote the business of ContraSwap by the allocation to interested parties of promotional ContraPoints.

5.3 ContraSwap **WARRANTS** that it will keep absolutely secret all information which it receives from the Client in confidence **PROVIDED THAT** this warranty will not apply to information which is in the public domain either at the time of receipt or time of disclosure nor to information which ContraSwap is under a public duty to disclose.

6. *LIMITATION OF LIABILITY*

- 6.1 ContraSwap's obligations and liabilities in respect of the Services are exhaustively defined in the Terms.
- 6.2 The express obligations of and warranties made by ContraSwap in paragraph 5 are in lieu of and to the exclusion of any warranty, condition, term, undertaking or representation of any kind whether express, implied, statutory or otherwise relating to anything supplied or the

Services provided (in this paragraph 6 referred together as a warranty) including (without limitation) a warranty as to the condition, quality performance, merchantability or fitness for purpose of the Services or any aspect of them. In particular the Client acknowledges that the internet is a volatile media given to unexpected and often inexplicable crashes and breaks in transmission.

6.3 Subject to paragraph 6.4 ContraSwap will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused whether arising under contract, tort (including negligence) or otherwise including (without limitation) loss of production, loss of or corruption to data, loss of profits, or of contracts, loss of operation time, loss of goodwill or anticipated even if ContraSwap has been advised of their possibility.

6.4 ContraSwap shall be liable in the event of ContraSwap's negligence or that of its employees or properly appointed sub-contractors.

6.4.1 without limit for death or injury to persons;

6.4.2 in all cases not falling within 6.4.1 the lesser of £5,000 in aggregate and the aggregate fees paid by the Client to ContraSwap in the 12 months preceding the relevant claim.

7. CLIENT INDEMNITY

7.1 The Client will indemnify ContraSwap in respect of any claim including a third party claim for any injury loss damage or expense occasioned by or arising directly or indirectly from the Client's possession operation use modification or supply to a third party of any thing supplied or provided under the Services and any part of it except and insofar as ContraSwap is liable as expressly provided by the Terms.

8. PAYMENT FOR SERVICES

8.1 The Client will pay ContraSwap for the provision of the Services, the Fees and charges set out in the body of the Agreement and any cancellation or additional Fees that might arise due to breach of the Terms by the Client.

8.2 Fees together with VAT at the prevailing rate will be paid by the Client within 30 days of invoice unless payment is by direct debit.

8.3 The Client will in addition to such Fees and charges pay interest to ContraSwap upon the amount of any invoice which is overdue from the date of invoice to the date of actual payment at 2% per annum over NatWest Bank Plc base rate for the time being.

8.4 On each anniversary of the Commencement Date the Fee payable hereunder shall be increased by the proportion by which the Retail Prices Index has increased from the Index two months before the month of the anniversary by comparison with the month 14 months before the month of the anniversary.

9. TERMINATION

Notwithstanding any other provision hereunder the parties shall be entitled to terminate this Agreement at any time upon the giving of written notice by one of them to the other in the event of any of the following:

- 9.1 The other party committing a material breach (and the failure of a Client to publish an advertisement ContraSwapped shall be a material breach) of any of its obligations or undertakings under these this Agreement and failing to remedy such breach (if capable of remedy) within a period of thirty days following receipt of written notice from the party giving notice so to do or within such longer period as may be mutually agreed between the parties;
- 9.2 The other party making a composition with its creditors or becoming insolvent or ceasing to trade or being wound up (other than for the purposes of a solvent reconstruction or amalgamation); or
- 9.3 one party giving to the other six months' written notice of termination to expire on an anniversary of the Commencement Date.

10. CANCELLATION AND SUSPENSION OF SERVICES

ContraSwap reserves the right to suspend provision of the Services in the event that any Fee is overdue.

11. EFFECT OF SUSPENSION AND TERMINATION

Immediately following suspension or termination of the Services (whether partial or in respect of all the Services) the Client shall forthwith pay to ContraSwap all outstanding Fees and charges and a reasonable amount due in respect of all Services for which no invoice has at the date of suspension been delivered, including any Fees and charges payable by instalments. In calculating a reasonable charge ContraSwap shall be entitled to take into account any loss of profit suffered by them arising out of the suspension or termination as the case may be.

12. ALTERNATIVE DISPUTE RESOLUTION

If a dispute arises between ContraSwap and the Client the parties hereto agree first to use their respective best endeavours in good faith to settle the dispute by mediation before having recourse to arbitration litigation or some other dispute resolution procedure. A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt of such notice the parties must within seven (7) days of receipt convene a meeting between their respective Chief Executive Officers and the other relevant members of management to attempt to resolve the dispute. If the dispute is not resolved within seven (7) days or within such further period as the parties agree then the dispute is to be referred to a mediation provider appointed by the parties and in default of agreement by the President for the time being of the Law Society.

13. FORCE MAJEURE

Neither ContraSwap nor the Client will be liable to the other for any delay in performance or failure to perform its obligations under the Terms (other than a payment obligation) due to any course outside its reasonable control. Such delay or failure will not constitute a breach of this Agreement and the time for performance of the affected obligation will be extended by such period as is reasonable.

14. NOTICES

All notices which are required to be given shall be in writing and shall be sent to the address of the recipient set out on the Order or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered personally by first class pre-paid letter or facsimile transmission and will be deemed to have been received:

- 14.1 by hand delivery – at the time of delivery
- 14.2 by first class post – 48 hours after the date of mailing
- 14.3 by facsimile transmission or email – immediately on transmission within the Service Hours (the hours of any Saturday Sunday or Public Holiday shall be ignored) provided a confirmatory copy is sent by first class prepaid post or by hand by the end of the next business day.

15. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter.

16. JURISDICTION

This Agreement shall be subject to the exclusive jurisdiction of the Courts of England and Wales and shall be interpreted according to English law.