

## Fospha's Standard Terms & Conditions

The following terms and conditions and the Order Form you sign form the Agreement between you, the Client or Agent, who has signed up for Fospha's services ("**you**", "**your**", "**Client**"), and us, (i) Fospha Limited trading as "Fospha", a company registered in England and Wales with company number 08902419 whose registered office address is at Scale Space, 1st Floor, 58 Wood Lane, London, United Kingdom, W12 7RZ, ("**us**", "**our**", "**we**", "**Fospha**"). You and us are each a "**party**", and together, the "**parties**".

We reserve the sole right at any time to modify, discontinue or terminate our services, or modify these terms and conditions (but not the Order Form) without notice. It is your responsibility to check these terms and conditions periodically for changes. By continuing to use our services after we make and post any such modification, you agree to be legally bound by the revised terms and conditions. You may not alter these terms and conditions without our express written consent.

Defined terms used in these terms and conditions shall have the meanings as set out in the Order Form between you and us unless the context requires otherwise.

If signing as an agent please see, in particular, clause 2 below.

### 1. What does this Agreement do?

This Agreement creates a legally binding agreement between Fospha and the Client, whereby Fospha will provide the Services in exchange for the Client paying Fospha the Fospha Fee.

### 2. What terms apply to me if I am an agent contracting on the behalf of a client?

These terms still apply to you. However, the following apply to you to reflect that you are contracting on behalf of a client:

- a. You warrant that you have the authority to enter into this agreement on behalf of your client;
- b. These terms create a binding agreement between Fospha and the Agent, rather than between Fospha and the client;
- c. You agree to make payment on the clients' behalf and be held liable for any late payments on the client's behalf;
- d. You retain ownership in any of your documents or materials that you provide Fospha;
- e. You are granted access to the Fospha Platform solely to fulfil your obligations as an agent;
- f. You agree not to reverse engineer or decompile the Fospha Platform;
- g. You agree not to grant access to, copy, reproduce, or redistribute any aspect of the Fospha Platform or any other documents or materials received by the agent as a result of this Agreement to any third party without Fospha's prior written consent except as provided for in this clause;
- h. You will be provided additional Unique users sufficient only to ensure that you can provide your services to your client;
- i. In the event that Fospha want to use the name and logo of your client the prior written consent of the client will be required unless you have the due authority to allow for the usage of your client's name and logo by Fospha, in which case, in granting such permission you warrant that you have such authority;
- j. You agree that the terms of this Agreement, and any information which would reasonably be considered confidential that is received by either party in connection with this Agreement is confidential, and each party hereby agrees to keep the terms of this Agreement and the other party's confidential information, confidential, for the duration of this Agreement and for ten (10) years after this Agreement ends. This means, either party must use reasonable security mechanisms to protect the confidential information, and not divulge the confidential information to any third party without the other party's prior written consent. Fospha allows the agent to share confidential information with its client only in so far as required for the client to receive services under this Agreement. The only other exceptions are if a party is required to divulge confidential information (i) as required under permitted law – in which case, the party may do so, but it shall inform the other party as soon as reasonably practical (if it is lawfully able to do so), (ii) to our professional advisors, (iii) in connection with the proposed transfer of any or all of our rights and obligations under this Agreement to a third party (iv) in connection with the proposed sale or reorganisation, merger, consolidation, acquisition, or other restructuring involving any or all of our voting securities or assets, (v) in connection with ordinary course discussions with members of the board of directors of either party, or (vi) in connection with any funding or equity investment negotiations with third parties where details of the Agreement are part of a due diligence process and such third parties have signed confidentiality agreements. If either party breaches any of the confidential obligations in this clause, then such breach will be a material breach, and the non-breaching party may immediately terminate this Agreement;
- k. You agree that we are able to use any data you provide to the Fospha relating to marketing spend and revenue by channel and other similar data for internal marketing and insight purposes. Furthermore, Fospha is able to publicly publish reports and graphs derived from such data provided that such reports and graphs shall only display agent data that is anonymised and aggregated with other Fospha agent and client data;
- l. YOU AGREE TO BE LIABLE IN PLACE OF THE CLIENT AS PER THE TERMS AT CLAUSE 15 BELOW; and
- m. After the Agreement ends you agree to pay all sums on your client's behalf up and until the termination date.

### 3. How long does this Agreement last?

This Agreement starts on the date of the last signature by the parties in the Order Form and it lasts until the end of the Term Length specified in the Order Form, unless terminated earlier as set out in these terms.

### 3. Does this Agreement automatically renew?

Yes, this Agreement will automatically renew for subsequent periods of the Initial Term (each an "**Extended Term**") unless either party provides the other party with written notice of its intention for the Agreement not to automatically renew at least thirty (30) days before the end of the Initial Term or any Extended Term.

### 4. How can the Client pay for the Services?

The Client can pay the Fospha Fee by credit or debit card through Stripe, our secure online payment platform provider. We will send a Stripe link to the Client along with the Order Form where the Client will be asked to insert and save their card details on Stripe for processing any payments under this Agreement.

The Client will be charged the Fospha Fee on a monthly basis and upfront, on or around each month anniversary of the Start Date. The Client will ensure that the card, the details of which were saved on Stripe, is valid so that the payments are processed by Fospha without any delays. In the event Fospha is unable to charge the Client on the saved credit or debit card due to incorrect or invalid card details, it reserves the right to cease the Client's access to the Fospha platform until a valid credit or debit card is provided and the payment is processed by Fospha.

The Client accepts that no access will be granted by Fospha under this Agreement, until the first monthly payment is processed upfront upon the signing of the Order Form by the Client.  
Order Form

Fospha reserves its rights to accrue simple interest at a rate of 4% per year above the Bank of England's base rate on any overdue fees under this Agreement..

#### **5. Can Fospha increase the Fospha Fee?**

Yes, Fospha may, at its sole and absolute discretion and without the Client's consent, increase the Fospha Fee on an annual basis to reflect increases in costs in line with the UK's retail price index ("RPI") of the preceding year; provided that any such percentage increase shall not be greater than the RPI for the preceding year.

Fospha also reserves the right to increase the base fee the pricing is based on, which may result in an increase in the Fospha Fee. Any change to this effect will be communicated to the Client where the Client will receive a new Order Form to sign with the new Fospha Fee.

Order Form

#### **6. Who owns what?**

Fospha owns all intellectual property rights in and to the "**Fospha Platform**", which is the software (including source code and object code) created by or for Fospha which provides data engineering services and/or analytics and data science services to Fospha's clients. Client owns all intellectual property rights to the Client's website(s), any documents or materials that the Client provides Fospha, and the output data specific to the Client which is created by Fospha in the provision of the Services (together, the "**Client Data**").

#### **7. Does this Agreement grant the parties the right to use each other's intellectual property?**

Yes, this Agreement gives (A) the Client the right to use the Fospha Platform solely for the purpose of receiving the Services, and (B) Fospha the right to use the Client Data solely for the purposes of product development and/or provision of the Services to the Client, in each case for the duration of this Agreement only. Any use of the other party's property other than as envisaged by this Agreement will be a material breach of this Agreement, allowing the non-breaching party the right to immediately terminate this Agreement.

#### **8. Are there any other restrictions on how the Client can use the Fospha Platform?**

Yes, the Client cannot reverse engineer or decompile the Fospha Platform, or otherwise grant access to, copy, reproduce, or redistribute any aspect of the Fospha Platform or any other documents or materials received by the Client as a result of receiving the Services under this Agreement to any third party without Fospha's prior written consent.

#### **9. How can the Client access the Fospha Platform?**

Fospha will provide the Client with unique log ins for up to the number of Authorised Users as stated in the Order Form. Any additional log-ins will be available for an additional payment of £100 + VAT per month for each additional log-in. You will procure that each Authorised User will not share their unique log-in details with anyone else.

#### **10. Can Fospha say that the Client is one of Fospha's clients?**

Yes, Client hereby gives Fospha permission to use the Client's name and logo on Fospha's website solely for the purpose of identifying the Client as one of Fospha's clients. This permission is only for the duration of this Agreement, so Fospha must remove any and all references to the Client within 30 days of this Agreement ending.

#### **11. Is this Agreement confidential?**

Yes, the terms of this Agreement, and any information which would reasonably be considered confidential that is received by either party in connection with this Agreement is confidential, and each party hereby agrees to keep the terms of this Agreement and the other party's confidential information, confidential, for the duration of this Agreement and for ten (10) years after this Agreement ends. This means, either party must use reasonable security mechanisms to protect the confidential information, and not divulge the confidential information to any third party without the other party's prior written consent. The only exceptions are if a party is required to divulge confidential information (i) as required under permitted law – in which case, the party may do so, but it shall inform the other party as soon as reasonably practical (if it is lawfully able to do so), (ii) to our professional advisors, (iii) in connection with the proposed transfer of any or all of our rights and obligations under this Agreement to a third party (iv) in connection with the proposed sale or reorganisation, merger, consolidation, acquisition, or other restructuring involving any or all of our voting securities or assets, (v) in connection with ordinary course discussions with members of the board of directors of either party, or (vi) in connection with any funding or equity investment negotiations with third parties where details of the Agreement are part of a due diligence process and such third parties have signed confidentiality agreements. If either party breaches any of the confidential obligations in this clause, then such breach will be a material breach, and the non-breaching party may immediately terminate this Agreement.

#### **12. Is there any personal data involved in this Agreement?**

No. We will require access to aggregated business data, along with pseudonymised transaction information, which may include a customer number, but we will not process or store any other data which would further identify an individual, therefore we would classify the customer number as pseudonymised. For further information on how we collect, store and process data, please refer to our Privacy Policy at <https://www.fospha.com/privacy-policy>.

#### **13. Can Fospha use Client data for marketing and insight purposes?**

Yes, Fospha is able to use Client data relating to marketing spend and revenue by channel and other similar data for internal marketing and insight purposes. Furthermore, Fospha is able to publicly publish reports and graphs derived from such data provided that such reports and graphs shall only display Client data that is anonymised and aggregated with other Fospha client's data.

**14. What happens if something beyond Fospha's reasonable control happens which prevents or delays Fospha from providing the Services?**

If something beyond Fospha's reasonable control happens, which prevents or delays Fospha from providing the Services, including without limitation any government-imposed restrictions or government guidance and/or recommendations, (each a "**force majeure event**") then Fospha won't be in breach to the Client for failing to perform such obligations, but only to the extent that such obligations are delayed or prevented by a force majeure event. Fospha will use its reasonable endeavours to keep the Client updated on the impact of the force majeure event on Fospha's ability to perform its obligations under this Agreement.

**15. Are there limits to what either party can sue for, if anything were to go wrong?**

Other than for liability arising as a result of fraud, or liability arising under anything which can't be limited or excluded by law (which, for the avoidance of doubt, shall be unlimited), yes, each party's total liability to the other party shall be limited to an amount equal to the total Fospha Fees payable by the Client to Fospha in the preceding 12 months to when the claim arose.

**16. When does this Agreement terminate and how does Fospha's "one-month money back guarantee" work?**

This Agreement may terminate at the end of the Initial Term or at the end of any subsequent Extended Term, if the Client sends Fospha a prior written notice as set out in clause 3 for the non-renewal of the Agreement. Failure by the Client to provide such notice shall result in the automatic renewal of the Agreement as per clause 3.

If the Client is provided with a new Order Form by Fospha with increased Fospha Fees as per clause 5 above, the Client will have the right to not accept the Order Form and terminate the Agreement by written notice and with immediate effect if the parties cannot agree otherwise on what the new Fospha Fees will be.

The Client may also terminate this Agreement by sending Fospha a written notice at any time during the Trial Period, which is the 1<sup>st</sup> month of the Term Length, on a one-month-money-back-guarantee basis. The Agreement will automatically terminate in the event such notice is sent by the Client, where Fospha will refund the Client any part of the Fospha Fee the Client was charged upfront.

In addition to the above, either party may terminate this Agreement with immediate effect by providing the other party with written notice to this effect, if the other party: (A) commits a material breach or a breach capable of remedy which isn't remedied within 30 days of notification of the breach, (B) becomes insolvent, or (C) ceases to carry on its business.

**17. What happens after this Agreement ends?**

(A) Each Party must stop using and return the other party's intellectual property, (B) the Client must pay Fospha any outstanding monies due for the provision of the Services up to and including the termination date and (C) Fospha is under no obligation to refund any portion of the Fospha Fee and/or any other fees and/or any other charges which have already been paid by the Client to Fospha, save for the refund to be made in the event of cancellation of the subscription by the Client during the 1<sup>st</sup> month of the Term Length, as set out in clause 16 above.

**18. Are the parties required to adhere to applicable law when performing their respective obligations under this Agreement?**

Yes, each party must (at its own expense) comply with all applicable laws and regulations when performing their respective obligations under this Agreement.

**19. Can a third party sue either party under this Agreement?**

No, this Agreement does not give any person who is not a party to it any right to enforce any of the terms of this Agreement.

**20. IMPORTANT DISCLAIMER!**

The data provided as part of the Services, while accurate to our reasonable knowledge, is not all-encompassing. You are advised to make your own independent assessment before adopting or implementing any suggestions provided. As such, we hereby disclaim and any all responsibility and liability which may arise from your reliance on our data, and we exclude, to the fullest extent allowed by applicable law, any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result.

**21. How can this Agreement be amended?**

Subject to the rest of this clause, any terms contained within the Order Form can only be amended by written agreement signed by representatives for and on behalf of each party, except for the email addresses and addresses of the parties which can be amended by email alone. The Fospha Fee can be revised in accordance with clause 5 by issuing a new Order Form to be agreed between the parties. These standard terms and conditions and the Data Protection Agreement may be updated by Fospha alone, without notice to the Client.

**22. How can notice be served on a party?**

Notice can be served by a party sending a letter or an email to the other party, at the addresses set out in the Order Form (as may be updated from time to time, including by email). Notice will be deemed received (A) two (2) days after posting, if notice is sent by registered mail or (B) immediately on transmission of an email, if notice is sent by email, but only if the sender doesn't receive a bounce back email saying that the email wasn't successfully transmitted to the intended recipient.

**23. Can each party assign this Agreement to another party?**

Yes, Fospha can assign its rights and benefits under this Agreement to any third party without the Client's consent, and the Client can assign its rights and benefits under this Agreement only with Fospha's prior written consent.

**24. What happens if any part of this Agreement becomes illegal or invalid under applicable law?**

If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced); then (A) the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable; and (B) without limiting the foregoing, in such circumstances the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of this Agreement as soon as possible.

**25. What happens if there is a conflict between the Order Form and these Standard Terms and Conditions?**

If there is a conflict between any of the Order Form and these Standard Terms and Conditions, the Order Form shall prevail.

**26. Are there any other documents, materials or conversations which form part of this Agreement?**

No, the parties agree that this Agreement and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

**27. Can either party make a public announcement about this Agreement?**

Other than Fospha's ability to include the Client's name and logo on its website identifying the fact that the Client is one of Fospha's clients, no – neither party can make a public announcement about this Agreement (including without limitation any of the terms of this Agreement), without the other party's prior written consent.

**28. Does this Agreement create a partnership or agency?**

No, the parties are independent contractors and nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.

**29. Waiver**

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

**30. Can this Agreement be signed in counterparts?**

Yes, this Agreement can be executed in any number of counterparts and all such counterparts will be deemed to constitute one and the same instrument. Executed signature pages of this Agreement transmitted electronically in PDF or similar and/or executed by way of a digital signature program (such as "DocuSign", "DocHub" or similar) shall, once executed in such manner by all parties, be deemed fully binding and with full legal force and effect.

**31. What law governs this Agreement?**

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

**32. Which courts have jurisdiction to hear any dispute that arises under this Agreement?**

The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).