

## Oystercatchers Club Membership Terms & Conditions

The Oystercatchers Club is brought to you by the company named on your Order (“we” “us” and “our” being interpreted accordingly). Membership of the Oystercatchers Club (“**Membership**”) is subject to the member agency and nominated representatives named to on the Order Form (and herein referred to as “you” and/or “your”) fulfilling the Membership criteria set by us from time to time and complying with these Terms.

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply to these Terms:

**"Affiliates"** means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity;

**"Authorised Users"** means those employees in your organisation who are entitled to have access to the Content as specified in the Order, which shall be a fixed number of employees and subject to any limitations set out in the Order;

**"Business Days"** means any day other than a Saturday or Sunday or any day which is a public holiday in the UK;

**"Content"** means any content provided by us to you and / or your Authorised Users, including on the Website, and including, without limit, any text, data, logos, graphics, photographs, images, animations, software, apps, forms, videos, music and other audio/visual materials;

**"Data Protection Legislation"** means all applicable data protection, privacy and electronic marketing legislation including Directive 2002/58/EC, the GDPR and any legislation and/or binding regulations amending, replacing, supplementing, implementing them or made in pursuance of them including the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended and any codes of practice relating to the same;

**"Event Outside Our Control"** means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action, government action, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic, disease or other natural disaster, or failure of public or private telecommunications networks;

**"Intellectual Property Rights"** means any and all present and future, patents, inventions, know-how, trade secrets and other confidential information, trademarks, service marks, logos, emblems, badges, mascots, insignia, identifying music and sounds, get-up, domain names, business names, trade names, moral rights, performance rights, registered designs, copyrights, database rights, the sui generis rights of extraction relating to databases, design rights and other intellectual property rights of whatever nature, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

**"GDPR"** means the General Data Protection Regulation (EU) 2016/679;

**"Order"** means an order for a Membership placed by you with us in accordance with these Terms (and **"Ordered"** shall be construed accordingly);

**"Personal Data"** has the meaning given to it in Article 4 of the GDPR;

**"Terms"** means these Membership Terms and Conditions, which apply to your Membership; and

**"Website"** means our website at <https://club.theoystercatchers.com/>.

- 1.2 The clause headings in these Terms are included for convenience only and shall not affect the interpretation of these Terms.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to **these Terms** or to any other terms, agreements or documents referred to in these Terms is a reference to these Terms or such other agreement or document as varied (in accordance with clause **Error! Reference source not found.**) or novated (in each case, other than in breach of the provisions of these Terms) from time to time.
- 1.9 References to clauses are to the clauses of these Terms.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. THE OYSTERCATCHERS CLUB**

The Oystercatchers Club is a private club available to selected agencies and their nominated representatives, allowing them access to certain special events and services offered by us and/or our partners.

**Benefits may include the following (subject to clause 3 below):**

- Invitations to all Oystercatchers Club events each year.
- Agency profile and content online on the Oystercatchers Club Network.
- Agency CEO profile on the member's section of the Oystercatchers website.
- Access to exclusive content online including webinars, industry insight and trend reporting.
- Opportunities to spend time with Oystercatchers' experienced senior team to discuss and get advice on the agency's credentials and positioning, plus dedicated Oystercatchers Club team for questions and support.
- Reduced fee to enter the Oystercatchers Awards.
- Special events at the Festival of Marketing, discounts on Econsultancy's Fast Track to Digital Marketing online training and a contribution towards a place on Marketing Week's Mini MBA.

### **Membership criteria:**

Member agency must (as determined by us from time to time) be:

- a top 20 agency within its industry sector; or
- a start-up agency whose agency heads have come from senior positions with a top 20 agency and/or have significant industry profile; or
- an agency with specialist capability that is of interest to senior marketers; and/or
- have agency leaders who are recognized leaders within the marketing industry.

### 3. MEMBERSHIP TIERS

**Please refer to your Order Form for details of which benefits are included in your Membership. Additional terms and conditions in respect of events, awards and online content may be applicable, where notified to you.**

### 4. ORDERS AND FORMING YOUR MEMBERSHIP

- 4.1 Orders may be made by making an email or telephone enquiry to our team, either through the website or by direct email.
- 4.2 To place an Order, contact our sales team by e-mail or telephone to discuss your requirements. Our sales team will then send you an order form ("**Order Form**") setting out the proposed terms of your Order and the Order Form that we send to you is an offer by us to provide you with a Membership on the terms set out in the Order Form.
- 4.3 You can accept these terms (at which point the Order will become binding) by either: (i) signing the Order Form and emailing a scan of the signed form back to us; or (ii) confirming by email that you accept the terms of the Order Form and attaching the Order Form to such email.
- 4.4 Please note that your use of our Website is governed by our Website terms and conditions at [www.centaurlmedia.com/terms-and-conditions](http://www.centaurlmedia.com/terms-and-conditions) ("**Website Terms and Conditions**") and that we will use any Personal Data you provide to us in connection with your Membership in accordance with our Privacy Policy which can be found at [www.centaurlmedia.com/privacy](http://www.centaurlmedia.com/privacy) ("**Privacy Policy**").
- 4.5 You, the business user, will ensure that each Authorised User and any other person using your Membership pursuant to these Terms is made aware of and complies with these Terms, our Website Terms and Conditions, our Privacy Policy and any other terms and conditions applicable to your Membership (as notified to you by us from time to time).
- 4.6 If there is any conflict between our Website Terms and Conditions or Privacy Policy and these Membership Terms and Conditions, then these Membership Terms and Conditions shall govern and take precedence.

### 5. CHARGES AND PAYMENT CHARGES

- 5.1 The charges for your Membership will be set out in your Order. In addition to our charges for your Membership, you are responsible for paying any internet connection or other telecommunication charges payable for accessing the content.
- 5.2 The charges are exclusive of VAT or any other sales tax applicable to your country of residence, and such taxes shall be payable by you at the applicable current rate chargeable at the time that we invoice you.
- 5.3 If the price we state to you for your Order is clearly incorrect then we are not obliged to provide you with a Membership at that price even if we have accepted your Order. If we notify you of a pricing error, you may continue your Membership at the correct price or cancel your Membership without any obligation to us and we shall refund you any monies that you have paid to us in respect of that Membership.

- 5.4 We have the right to make changes to the charges from time to time.
- 5.5 We may give you the option to pay the charges on, usually, either a monthly or an annual basis. Any such options and any other options for payment will be specified in your Order.

## 6. PAYMENT

- 6.1 You shall pay the charges by invoice, as applicable to your Order.
- 6.2 We shall be entitled to issue an invoice to you for the charges on an annual basis as applicable and you shall pay each invoice submitted by us:
  - 6.2.1 within 30 days of receipt of the invoice (unless otherwise specified in the Order Form); and
  - 6.2.2 in full and cleared funds to the bank account nominated by us on the invoice.
- 6.3 Please note that if you have any queries or complaints in respect of an invoice, such queries or complaints must be notified to our Finance Department in writing within 14 days of the date of such invoice.
- 6.4 Without limiting any of our other rights or remedies, if you fail to make any payment due to us under these Terms by the due date for payment, we shall have the right to charge interest on the overdue amount at the rate of 2% per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment.
- 6.5 You shall pay all amounts due under these Terms in full without any deduction or withholding except as required or permitted by law. We may, without limiting its other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

## 7. TERM AND TERMINATION

- 7.1 Your Membership will last for a period of 12 months (the "**Initial Term**"). Your Membership will automatically renew at the end of the Initial Term unless you confirm to us in writing that you do not want to renew, this confirmation needs to be received by us no later than 3 days before the Membership ends.
- 7.2 We may cancel your Membership at any time by giving you at least 90 days' notice in writing.
- 7.3 If we exercise this right, we shall refund you, on a pro rata basis, the charges paid by you that are for the portion of your Membership remaining after termination of your Membership.
- 7.4 We may, at our option, suspend or terminate your Membership at any time with immediate effect by giving writing notice to you if:
  - 7.4.1 you fail to pay any amount due under these Terms on the due date for payment; or
  - 7.4.2 you otherwise breach these Terms.
- 7.5 We may, at our option, suspend or terminate your Membership with immediate effect if you become subject to any of the following events, or we reasonably believe that you are about to become subject to any of them:

- 7.5.1 you, other than for the purpose of a bona fide reconstruction or amalgamation pass a resolution for your winding up, or a court of competent jurisdiction makes an order for you to be wound up or dissolved;
  - 7.5.2 an administrator is appointed or an administrative order is made in relation to you or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity's undertaking assets, rights or revenue;
  - 7.5.3 you enter into an arrangement, compromise or composition in satisfaction of your debts with your creditors or any class of them, or take steps to obtain a moratorium, or make an application to a court of competent jurisdiction for protection from your creditors;
  - 7.5.4 you are unable to pay your debts, or you are capable of being deemed unable to pay your debts, within the meaning of section 123 of the Insolvency Act 1986; or
  - 7.5.5 you enter into any arrangement, compromise or composition in satisfaction of your debts with your creditors.
- 7.6 On expiry or termination of your Membership for any reason:
- 7.6.1 you shall immediately pay to us all outstanding unpaid charges;
  - 7.6.2 your, and where applicable, your Authorised Users' access to Membership benefits will be revoked.

## **8. CONTENT**

- 8.1 We are the owners or licence holders of the Intellectual Property Rights in the Content we provide to you and you acknowledge and agree that nothing in these Terms shall be construed so as to transfer any Intellectual Property Rights in the Content to you or your Authorised Users.
- 8.2 We hereby grant to you and, where applicable, your Authorised Users, a limited, non-exclusive, non-transferable, worldwide licence to use the Content provided that it is only used for your own business purposes within your organisation.
- 8.3 You shall not alter or remove any copyright notices or other notices indicating rights in the Content.
- 8.4 For the avoidance of doubt, the licence granted in clause 8.2 shall not permit you or your Authorised Users do any of the following without our prior written consent:
- 8.4.1 sub-license, rent, lease, transfer or assign any Intellectual Property Rights in the Content to any other person, or attempt to do any of the foregoing;
  - 8.4.2 disclose the Content whether in part or in its entirety to any third party, including any associated or affiliated company or, if applicable, to anyone within your organisation who is not an Authorised User; or
  - 8.4.3 in any way commercially exploit any of the Content.
- 8.5 Further, you agree that you and your Authorised Users shall:
- 8.5.1 not use the Content to develop or provide, directly or indirectly, any product or service that competes with our business or any of our Affiliates' businesses;
  - 8.5.2 not use the Content in any way which might infringe third party rights, including third party Intellectual Property Rights;

- 8.5.3 not, to the extent the Content contains Personal Data, share such Personal Data with any third party or use it other than for purposes for which it is expressly provided;
  - 8.5.4 to the extent the Content contains Personal Data, comply with any obligations you may have under Data Protection Legislation;
  - 8.5.5 to the extent the Content contains Personal Data, take appropriate technical and organisational measures to keep such Personal Data secure;
  - 8.5.6 not use the Content in any way that is contrary to applicable law;
  - 8.5.7 not modify, decompile or reverse engineer any software supplied as part of the Content.
- 8.6 You grant us a non-exclusive perpetual irrevocable worldwide licence to use Your name and trade marks in connection with the promotion and delivery of the Course.
- 8.7 The name 'Oystercatchers Club' and other names, logos or marks may be trade mark belonging to us or other companies in the Centaur Media plc group ("**Trade Marks**").
- 8.8 To the maximum extent legally permitted, you cannot link to or seek to extract data from our Content or reutilise any Content for any commercial purpose or use our Trade Marks or Intellectual Property Rights in a way that suggests that you or your business has any endorsement from or affiliation to us or other brands or companies in the Centaur Media plc group without our prior written permission (at our sole discretion).
- 8.9 You shall be solely responsible for ensuring that you have the necessary technology to access the Website such as a computer, internet access, and any other technical equipment as these are not provided by us as part of the Course.
- 8.10 We shall endeavour to provide constant, uninterrupted access to the Website, but we cannot and do not guarantee to do so. Access to our Website is permitted on a temporary basis. We may suspend, withdraw, discontinue or change all or any part of our Website without notice.

## 9. YOUR USE OF YOUR MEMBERSHIP

- 9.1 You must only use the Oystercatchers Club, its Content and Website ("**Club Materials**") for legal purposes in accordance with these Terms and are prohibited from using the same to engage in any illegal or fraudulent activity or in a manner that (in our reasonable opinion) is liable to damage our business or harm other users. Your use of the Club Materials is subject to our membership rules and other policies or guidelines that we may communicate to you from time to time.
- 9.2 You also undertake that any Personal Data and other information you may provide to us when registering or signing up to any of our services, or during the course of your Membership, is complete, accurate and up to date. In relation to any material you submit to us, to other members and/or on our Website, you undertake to us that either you own this material or have the necessary rights, clearances and or approvals you need to submit or post such material. If you are submitting or posting Personal Data on behalf of another person, you confirm that you have their prior authority to do so and have provided them with a copy of our Privacy Policy.
- 9.3 You acknowledge that members' profiles (including your profile and those of your Authorised Users) may be made publically available on our Website. Our other members' profiles are made available to you in order to facilitate business relationships between you and the professionals featured in such profiles. You acknowledge and agree that you are solely responsible for your (and your Authorised Users') use of any Personal

Data within any Club Materials and you undertake to comply with Data Protection Legislation in respect of such use.

- 9.4 You agree to indemnify us in relation to any third party legal actions or claims that are made against us and for any associated losses, damages or expenses (including any legal expenses) that we suffer as a result of you breaching your obligations or undertakings in this Section 9.

## 10. OUR LIABILITY

- 10.1 Nothing in these Terms shall exclude or limit our liability for fraud or for death or personal injury resulting from our negligence (or the negligence of our employees or agents) or where applicable law does not permit us to restrict or exclude particular obligations or liabilities.
- 10.2 Subject to clause **Error! Reference source not found.**, we shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with these Terms for:
- 10.2.1 any loss of profit, business, business opportunity, contracts, anticipated savings, goodwill, or revenue;
  - 10.2.2 any wasted expenditure;
  - 10.2.3 any inaccuracies in the Content;
  - 10.2.4 any use by you of personal data displayed on our Website or within any Content;
  - 10.2.5 any damage to any property used in connection with any Content;
  - 10.2.6 any loss or corruption of data; or
  - 10.2.7 any indirect or consequential loss.

In addition, we cannot guarantee that any Content you access or download is free from viruses, worms or other malware, and you should check that you have suitable, up to date virus or malware protection on your computer or device.

- 10.3 Subject to clause **Error! Reference source not found.**, our maximum aggregate liability in contract, tort, or otherwise (including any liability for any negligent act or omission) howsoever arising out of or in connection with the performance of our obligations under these Terms shall be limited to a sum equal to the amount of the charges for the Membership as set out in the Order Form.
- 10.4 We do not make any representation and exclude all warranties, terms or conditions (whether express or implied by law or otherwise) in respect of the Club Materials, including, without limitation, any decision you take on the basis of information provided through the Website, except that nothing in these Terms shall exclude or restrict your statutory rights or other rights that cannot be excluded or restricted under applicable law. Except as set out above, we will not be liable for (1) any indirect, consequential or special loss or damage; or (2) any lost revenue, profits or other economic loss (whether direct or indirect), however arising from your use of this Site.
- 10.4 You agree to indemnify and hold harmless us and our Affiliates fully and effectively in respect of all liabilities, claims, actions, costs, damages and/or loss arising out of any breach of this Agreement by you or your Affiliates.

## 11. PRIVACY

- 11.1 How we collect and process your Personal Data and safeguard your privacy is explained in our Privacy Policy and which forms part of these Terms. We also have a Cookies Policy that governs use of cookies and other tracking technologies which may be used in relation to the Club Materials.
- 11.2 You will ensure that Authorised Users are aware that we may share information about their use of Memberships with you (in accordance with our Privacy Policy).

## **12. CHANGES TO THESE TERMS**

We may amend these Terms at any time, for example, where we add new services or features or where there is a change in applicable law. All such changes will take effect once these Terms have been updated and you will be assumed to have accepted any such changes if you continue to use the Club Materials after the latest update.

## **13. PURCHASE OF PRODUCTS OR SERVICES**

If you elect to purchase any products or services which we offer to you through the Club Materials (or any affiliated website of another Centaur Media plc group company) this may be subject to new and/or additional terms and conditions which will be notified to you at the time.

## **14. EVENTS OUTSIDE OUR CONTROL**

We shall have no liability or responsibility to you for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by an Event Outside Our Control.

## **15. INVALIDITY & WAIVER**

If any of these Terms is found by a court or a regulator to be invalid or unenforceable the other provisions shall continue to apply to the maximum extent legally permitted. No waiver of any of these Terms shall be effective unless made in writing by us and a waiver (or non-enforcement) shall not be construed as a waiver of any subsequent breach.

## **16. GOVERNING LAW**

In the event of any dispute between you and us concerning these Terms, the laws of England and Wales will apply. If you wish to take court proceedings against us, you should do so within England and Wales, except to the extent that applicable law in your country of residence requires mandatory application of another law and/or jurisdiction and/or language and such requirement cannot lawfully be excluded under these Terms in which case such law and/or jurisdiction and/or language shall apply, as far as legally required.

## **17. MISCELLANEOUS**

- 17.1 We may at any time assign, mortgage, charge, subcontract, delegate or declare a trust over any or all of our rights and obligations under these Terms to or for the benefit of any person. You may not transfer, assign, sub-licence, sub-contract, divest or otherwise deal with your rights or obligations under these Terms and Conditions without our prior written consent.
- 17.2 These Terms are made between you and us, but are also made for the benefit of our Affiliates. It is intended that all our Affiliates may enforce the benefits conferred on it under these Terms in accordance with the terms of the Contracts (Rights of Third Parties) Act 1999. Apart from our Affiliates, no other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.



17.3 No failure or delay by us in exercising any right or remedy provided under this these Terms and Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict our further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict our further exercise of that or any other right or remedy.

17.4 The rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

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