



**FirmDecisions**

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Terms of Service

## Summary

We are FirmDecisions, an independent global marketing and media consultancy, and we're delighted to work with you! Our services are unique, so we've set out a summary below to explain some of the terms you'll find in these Terms of Service (Terms).



**The services we provide.** We will provide you with the following service:

### Contract Compliance

Auditing your media agency's compliance with the terms of its contract with you.



**How we'll provide services.** Details about the services you're purchasing, fees and more will be described in a Statement of Work (SOW). We will provide you with the services described in your SOW, however we may also engage our affiliates to assist in providing you with certain services.



**Who can purchase services.** Both you and your affiliates can use our services - your affiliates simply need to enter into their own SOW with us directly.



**Our deliverables.** Our deliverables generally comprise reports setting out our findings.



**Ownership of deliverables.** We own the intellectual property rights to any deliverables we provide you. This is because the proprietary methodology used to create them must remain our property, and we require clients not to share these deliverables with any unapproved third parties (except for specific media agencies). However, you're granted a licence to use deliverables indefinitely for your internal business purposes.



**No personal data.** Generally, we don't need to collect any personal data from you in order to provide our services. We ask that you don't share any personal data with us unless we specifically ask for it and we both agree to enter into a data processing agreement.



**How long these terms last.** These Terms will remain in effect until all SOWs you and we enter into are terminated or expired.



**When to expect invoices.** Unless your SOW says otherwise, we'll invoice you for:

- 50% of the fees upfront, and
- 50% of the fees invoiced monthly on a pro rata basis until the end of the period covered by the SOW.

## About the agreement

- 1.1 **Our Agreement.** These Terms of Service (Terms) set out the terms on which we agree to provide you with Services. The specific services you agree to purchase will be set out in your Statement of Work (SOW), which incorporates these Terms by reference. These Terms and any SOWs you and we enter into make up the Agreement.
- 1.2 **The parties.** The parties to the Agreement are:
  - (a) FirmDecisions, we, us or our which is the FirmDecisions entity stated in the relevant SOW, and
  - (b) Client, you and your which is the entity described in the relevant SOW.
- 1.3 **Statements of Work.** Your SOW will set out the Services we agree to provide. We are not obliged to deliver any Services until a SOW is signed by both parties and a full and valid purchase order has been received.
- 1.4 **Third parties.** The Agreement is entered into for the benefit of FirmDecisions Group Company and your Affiliates. This means your Affiliates may purchase any of the Services directly from us or an FirmDecisions Group Company by entering into a SOW with us or relevant FirmDecisions Group Company. If this occurs, references to FirmDecisions or Client in these Terms will be construed as the FirmDecisions Group Company and/or your Affiliate where applicable. For clarity:
  - (a) **Affiliate** means, in relation to either party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party, and
  - (b) **FirmDecisions Group Company** means an Affiliate or subsidiary of FirmDecisions. FirmDecisions Group Company may enforce the terms of the Agreement directly against you however their consent is not required in order to vary this Agreement.
- 1.5 **Conflicts.** If any terms in the SOW conflict or are inconsistent with these Terms, the term in the SOW will take precedence.

## Our obligations

- 2.1 **Obligations.** Subject to the terms of the Agreement, we will:
  - (a) provide the Services and deliver any deliverables stated in the SOW, and
  - (b) use reasonable endeavours to meet any delivery dates specified in the applicable SOW.
- 2.2 **Provision of Services.** We may use FirmDecisions Group Company and/or subcontractors to perform all or part of the Services. If we do so, we will always remain responsible to you for their acts or failure to act as if they were our own. We may also use third parties to provide the Services and collect and store Client Materials (as defined below) and provide any deliverables stated in the SOW.
- 2.3 **Anti-bribery and corruption.** We operate business ethics and anti-bribery policies which are available on our website.

- 2.4 **Prevention and delay.** Our delivery of the Services depends on the reasonable cooperation of you and your agents and subcontractors. If we are prevented or delayed from performing our obligations under the Agreement because of something you, your agents or your subcontractors do or fail to do (such as not providing us with the level of access we need to perform the Services or failure by you or your media agent to provide us with required data), we will:
- (a) not be liable for any losses you suffer directly or indirectly as a result, and
  - (b) be entitled to charge additional fees that we reasonably incur due to the prevention or delay.

## Your obligations

### 3.1 **General.** You agree to:

- (a) reasonably co-operate with us in all matters relating to the Services,
- (b) provide us with the appropriate level of access and any data, information or materials that you own, are licensed to you or which are provided by an advertising or media agency or other supplier on your behalf (**Client Materials**) we reasonably need to provide the Services and use reasonable endeavours to procure that your agencies and suppliers do the same,
- (c) ensure that all Client Materials are accurate and complete in all material respects as far as is reasonably practicable. You acknowledge that we rely on Client Materials to provide the Services and are not responsible for the accuracy or completeness of Client Materials,
- (d) provide a purchase order number upon signature of the applicable SOW if we request it, and
- (e) obtain and maintain all necessary licences and consents and comply with all relevant legislation to enable us to provide the Services and supply us with Client Materials.

### 3.2 **Warranties.** You represent and warrant that:

- (a) you have the power and authority to enter into the Agreement and bind yourself and any of your Affiliates who enter into a SOW with us to its terms, and
- (b) our receipt and use of Client Materials to perform the Services, including by our agents, subcontractors or consultants, will not infringe any rights (including Intellectual Property Rights) of a third party.

## Fees and payment

### 4.1 **Fees.** Fees for the Services are set out in your SOW (Fees) and are subject to applicable sales tax. Unless the applicable SOW states otherwise, we will invoice you:

- (a) 50% of the Fees upon signature of the SOW, and

- (b) 50% of the Fees in equal monthly instalments for the duration of the applicable SOW. You will receive your first invoice for the remaining Fees one month after we begin delivering the Services.
- 4.2 **Payment terms.** Fees are invoiced in the currency stated in the SOW. Invoices must be paid within 30 days of the invoice date and without any withholding or right of set-off. You are responsible for paying any taxes due on the supply of Services.
- 4.3 **Late payments.** If an undisputed payment is overdue, we may charge daily interest compounded quarterly until payment is made either at:
  - (a) the rate set out in Wall Street Journal plus 3% (if you are established in the United States of America), or
  - (b) the Royal Bank of Scotland plc base rate (if you are established outside the United States of America),but in either case no greater than the legal maximum. We may also suspend performance of the Services until payment is made.
- 4.4 **Expenses and additional charges.** Unless specified in your SOW, Fees exclude any travel and accommodation expenses or third party charges for services, data and/or materials which we reasonably require to supply the Services. We will invoice you for these expenses and charges separately and at cost. Where necessary, we may invoice for third party services before the service is provided. We will always notify you in advance before incurring such additional expenses or charges, except for reasonable travel expenses.
- 4.5 **Cost fluctuations.** The cost of third party services or materials may change between the date we order (or receive your approval to order) them, to the date we actually pay for them due to currency exchange rate fluctuations. If this occurs, we will charge you at the currency exchange rate in operation on the date we pay. This will be either the closing mid-point rate for that day in either New York if you are established in the United States of America or London if you are established outside the United States of America, and as subsequently quoted in the next published edition of The Financial Times.

## Term and termination.

- 5.1 **Term.** These Terms take effect once we begin providing you the Services and will continue, unless terminated in accordance with these Terms, until the expiry or termination of all SOWs (Term).
- 5.2 **Termination for cause.** Either party may terminate these Terms or a SOW immediately by providing written notice to the other if the other party:
  - (a) commits a material breach of the Agreement which is either incapable of remedy or fails to be remedied within 30 days of receiving notice of such breach by the non-breaching party, or
  - (b) becomes subject to insolvency, liquidation, receivership, administration or other similar event.



- 5.3 **Termination by us.** We may also terminate the Agreement if any undisputed Fees remain unpaid for longer than 21 days after being notified in writing to make such payment.
- 5.4 **Cancelling Services.** Should you wish to cancel any Services set out in a SOW at any time, you agree to remain responsible for paying:
- (a) an amount agreed by the parties in good faith to reflect the portion of the Services provided up to the date of cancellation, and
  - (b) any third party expenses we have incurred or committed to in connected with providing the Services under the SOW.
- 5.5 **Consequences of termination.** On termination of these Terms or a SOW:
- (a) we will, on request, return any Client Materials in our possession,
  - (b) you will immediately pay all outstanding and unpaid invoices and interest,
  - (c) we will invoice you for any Services supplied for which no invoice has been submitted which will be payable within 30 days, and
  - (d) any rights, remedies, obligations or liabilities of either party that accrued up to the date of termination will remain unaffected.

## Intellectual property

### 6.1 Definitions.

- (a) **Background IP** means all documents, information, materials, methodology, formulae, techniques, programs, data, databases, tools, processes, reports and/or know-how used by us and incorporated into the Deliverables which:
  - (i) existed before the start of the Agreement, or
  - (ii) are developed by us or any FirmDecisions Group Company which are not specifically for you.
- (b) **Deliverables** means any reports, or any other document specifically identified as a deliverable in the SOW, prepared by us or on our behalf solely for you as part of the Services.
- (c) **Intellectual Property Rights** means all rights in and to patents, inventions, utility models, copyright and related rights, trademarks, service marks, sue for passing off, business and domain names, get-up, goodwill, unfair competition, designs, computer software, databases, topography, moral rights, Confidential Information (including know-how and trade secrets), and any other intellectual property rights, whether registered or unregistered, including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- (d) **Third Party Materials** means materials, information, documents and/or software owned by third parties and which form part of the Deliverables.

- 6.2 **Licenses to you.** You agree that the Intellectual Property Rights and any other rights in and to the Deliverables, Background IP or Third Party Materials are the

property of us, our licensors and/or the relevant third party (as applicable).

Subject to payment of all Fees, we grant you a worldwide, perpetual, fully paid-up, non-transferable, non-sublicensable licence to use the Deliverables, Background IP and Third Party Materials for your internal business purposes only and as permitted under the Agreement.

- 6.3 **Warranties.** Except in respect of any element of the Deliverables which are Third Party Materials, we warrant that your receipt and use of the Services and Deliverables will not infringe the Intellectual Property Rights or any other rights of any third party.
- 6.4 **Use of Deliverables.** Any Deliverables we create for you as part of the Services must only be used for your internal research and reference purposes. They must not be copied, reproduced, rebroadcast or commercially exploited without our prior written consent (not to be unreasonably withheld).
- 6.5 **Client Materials.** You grant to us a fully paid-up, non-exclusive, royalty-free, non-transferable licence during the Term to use Client Materials solely to the extent necessary to provide the Services and Deliverables and perform our obligations under the Agreement.
- 6.6 **Restrictions.** You warrant that you will not, without our prior written consent which we will not unreasonably withhold or delay, share the Deliverables or any other materials we provide to you in connection with the Services to any third party except for:
  - (a) your Affiliates, or
  - (b) advertising or media agencies/buyers whose work has been reviewed or audited by us in connection with the Services.

If you wish to share any Deliverables or other materials we prepare with advertising or media agencies or media buyers, you must first ensure they enter into a confidentiality agreement with us and that they do not distribute Deliverables to any other third party.

## Data protection and privacy

- 7.1 **No personal data.** Generally, we do not require the sharing of personal data to provide the Services. Except where we specifically request and consent to receive it, you must not send us any personal data and will ensure any third parties do not send us personal data on your behalf. If we do receive personal data, we both agree to enter into a data processing agreement which is available from us on request.
- 7.2 **Privacy policy.** Each party agrees to comply with applicable data protection legislation. Any personal data we handle is processed in accordance with our privacy policy at [www.firmdecisions.com](http://www.firmdecisions.com).

## Confidentiality

- 8.1 **Definition.** Confidential Information means all information relating to a party that is marked as confidential or would reasonably be considered confidential under the

circumstances in which it is shared. This includes but is not limited to information relating to either party's customers and suppliers, products and services, the terms and existence of the Agreement, data created or provided by us in connection with the Services, and your marketing strategy and media plans.

8.2 **Exceptions.** Confidential Information does not include information that is:

- (a) in the public domain not by breach of the Agreement,
- (b) already known by the receiving party at the time of its disclosure,
- (c) lawfully received by a party free of any obligation of confidentiality at the time of its disclosure, or
- (d) independently developed by a party without access to or use of Confidential Information.

8.3 **Obligations.** Each party agrees to:

- (a) maintain the confidentiality of any Confidential Information shared by the other party,
- (b) not disclose, copy or modify Confidential Information without the owner's prior written consent,
- (c) only use Confidential Information for the purposes permitted by the Agreement, and
- (d) promptly destroy or return any Confidential Information it holds upon the owner's request and provide written certification if requested, except if required by legal or regulatory obligations to retain copies of Confidential Information which must be securely stored in archival or computer back-up systems and remain subject to the Agreement's terms until the earlier of its erasure of 5 years after the termination of the Agreement.

8.4 **Permitted disclosures.** Each party may disclose Confidential Information to its Affiliates, employees, directors or advisors (**Permitted Receivers**) on a strictly "need to know" basis who are bound in writing to confidentiality obligations similar to the terms set out in the Agreement. Each party is liable for all acts or omissions of its Permitted Receivers that would constitute a breach of the Agreement if it were a party to it.

8.5 **Necessary disclosure.** Each party may disclose Confidential Information if required by law provided that they notify the owner as soon as possible, if legally allowed, and take reasonable steps to limit disclosure.

8.6 **Confidentiality term.** Each party's confidentiality obligations under the Agreement will remain in force for 5 years after the termination or expiration of the Agreement.

## Indemnities

9.1 **Our indemnity obligations.** We agree to defend, indemnify and hold harmless you, your Affiliates, and all of your and their respective officers, directors, employees, agents, successors and assigns from and against any liabilities, claims, costs,



damages, awards and expenses (including all reasonable legal fees) incurred which arise from a third party claim for actual or alleged infringement of that third party's intellectual property rights in connection with the Services or Deliverables. This indemnity does not apply to the extent that such infringement relates to or results from:

- (a) the combination, operation, or use of the Services or Deliverables with Client Materials or any other items or resources not furnished by us,
- (b) your failure to use replacement FirmDecisions items or resources we provide to avoid infringement,
- (c) any modification of the Services or any Deliverable other than by or on behalf of us,
- (d) our compliance with your specifications or instructions, provided that we will aim to notify you if we suspect that compliance with such specification or instruction may result in infringement, or
- (e) your breach of these Terms or SOW.

9.2 **Your indemnity obligations.** You agree to defend, indemnify and hold harmless us and our Affiliates, subcontractors, and each of our and their respective officers, directors, employees, agents, successors and assigns from and against any and all liabilities, claims, costs, damages, awards and expenses (including all reasonable legal fees) incurred which arise from a third party claim for actual or alleged infringement of that third party's Intellectual Property Rights in connection with Client Materials.

9.3 **Conduct of claims.** The indemnified party must provide the indemnifying party with prompt written notice of any third party claims, however any failure to do so will not relieve the indemnifying party of its obligations to indemnify and defend under the Agreement except if the indemnifying party demonstrates actual prejudice as a result of such failure. The indemnifying party:

- (a) must notify the indemnified party in writing within 30 days of receiving a notice of claim, and no later than 10 days before any formal response to the claim is due, that it elects to assume control of the defence (a **Notice of Control**),
- (b) will conduct the defence and all negotiations for settlement of the claim consistent with the rights of indemnified party, provided that:
  - (i) the indemnified party cooperates and provides all information reasonably necessary for the indemnifying party to conduct its investigation, trial, defence and/or settlement and at the indemnifying party's cost,
  - (ii) no settlement or compromise will be agreed, other than payment by the indemnifying party, without the indemnified party's written approval, and
  - (iii) the indemnified party may participate in the defence and/or negotiations to protect its interests at its own cost.

If the indemnifying party does not deliver a timely Notice of Control, the indemnified party may defend and/or settle the claim in a manner it deems appropriate, including payment of any settlement, judgment or award and the costs of defending or settling the claim, at the sole expense of the indemnifying party.

## Limitation of liability

- 10.1 **Unlimited liabilities.** Nothing in the Agreement limits or excludes either party's liability:
- (a) where it would be unlawful to do so (for example, fraud, death, or personal injury caused by negligence), or
  - (b) for payment of Fees due under any SOW.
- 10.2 **Exclusions.** Neither party is liable for any:
- (a) indirect or consequential loss,
  - (b) loss of business, revenue or profits, or
  - (c) loss or corruption of data or information.
- 10.3 **Limitations on liability.** Each party's liability under the Agreement is limited to:
- (a) twice the total amount of Fees paid in the preceding 12 months under the SOW to which the claim relates for any breach of data protection and confidentiality obligations, and
  - (b) the total amount of Fees paid in the preceding 12 months under the SOW to which the claim relates for all other claims brought under the Agreement.
- 10.4 **FirmDecisions Group Company.** If a court determines that any FirmDecisions Group Company or subcontractor has any liability in connection with the Services, the limitations and exclusions of liability under in this section operate to their benefit.
- 10.5 **Aggregated liability.** Where we enter into a SOW with any of your Affiliates, then the limits on our liability set out in this section will apply collectively to and be shared amongst you and all your Affiliates, and you are responsible for determining how to share it.
- 10.6 **Disclaimer of warranties.** Except for those expressly stated in the Agreement, all warranties and express or implied terms are excluded, including warranties as to quality, fitness for purpose and merchantability.

## Other important terms

- 11.1 **Force majeure.** Except in respect of your obligation to pay Fees, neither party is liable or will be in breach of the Agreement for any delays or failures in its performance of the Agreement that result from an event beyond that party's reasonable control.

- 11.2 **Publicity.** You agree that we may use your name and logo on our website and marketing materials to state that we provide services to you. For all other marketing materials which specifically identify you, we agree to obtain your prior written consent.
- 11.3 **Survival.** Any provision in the Agreement which is intended to remain in force on or after the termination of the Agreement, will continue to remain in full force. The right to use the Pricing and Audience Data by us, any FirmDecisions Group Company and subcontractors will survive the termination of the Agreement.
- 11.4 **Assignment.** Except in relation to FirmDecisions Group Company, neither party may transfer or assign the Agreement without the other party's prior written consent, not to be unreasonably withheld or delayed.
- 11.5 **Variation.** No variation of the Agreement is effective unless it is in writing and signed by an authorised representative of each party.
- 11.6 **Waiver.** If a party fails to enforce a right under the Agreement, that is not a waiver of that right at any time.
- 11.7 **Severance.** If any provision of the Agreement is held to be invalid or unenforceable in whole or in part, the validity of all other provisions (and if applicable, the remainder of the provision in question) will not be affected.
- 11.8 **Counterparts.** The Agreement may be executed in counterparts via electronic signatures, each of which is an original, and all of which constitute one and the same.
- 11.9 **Entire agreement.** The Agreement constitutes the entire agreement between the parties. All prior discussions, confidentiality agreements and any other agreements relating to its subject matter (including any terms and conditions attached to a purchase order or other similar agreements submitted by you) are expressly superseded by the Agreement.
- 11.10 **No partnership or agency.** Nothing in the Agreement is intended or operates to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party has the authority to act in the name or on behalf of or otherwise bind the other in any way.
- 11.11 **Third party rights.** Except as otherwise expressly stated in the Agreement, a person who is not party to the Agreement has no right to enforce any term of its terms (including under the UK Contracts (Rights of Third Parties) Act 1999, where applicable).
- 11.12 **Notices.** Any notice under the Agreement must be provided in one of the following forms to the contact details set out on the SOW and will be deemed received as follows:

Form	Deemed receipt
Email	At the time it is sent, or when business hours resume if the time falls outside of 9am-5pm Mon-Fri (excluding public holidays in the place of receipt)

By hand	At 9am on the third business day after posting or at the time recorded by the delivery service
First-class or next-day post	On signature of a delivery receipt

This section does not apply to the service of proceedings or documents in any legal action or, where applicable, any method of dispute resolution.

11.13 **Governing law and jurisdiction.** If you are contracting with:

- (a) Firm Decisions ASJP LLC, the Agreement will be governed by the laws of New York and the courts located in New York will have exclusive jurisdiction to settle any disputes in relation to it, or
- (b) any other FirmDecisions Group Company, the Agreement will be governed by the laws of England and Wales and the courts located in England and Wales will have exclusive jurisdiction to settle any disputes in relation to it.