

Independent Cottages - Website Advertising Terms

Please read these Website Advertising Terms before applying to become an Advertiser, as they set out our and your legal rights and obligations in relation to our Advertising Services. You will be asked to agree to these Website Advertising Terms before becoming an Advertiser.

If you have any questions or complaints about our Advertising Services please contact us by writing to Independent Cottages, The Willows, Woodhill, Meopham, Kent DA13 0DJ, or by sending an email to sarah@independentcottages.co.uk.

1. Definitions and interpretation

1.1 In the Agreement:

"Advertisement" means the advertisement on the Website that is the subject of the Agreement, comprising the Advertiser Content and the Independent Cottages Content;

"Advertiser" means the person or company identified as such in the letter, fax or email under cover of which the Agreement is sent by Independent Cottages;

"Advertiser Content" means all works, materials and content provided by the Advertiser to Independent Cottages for incorporation into the Advertisement or uploaded by the Advertiser to the Website;

"Advertising Services" means the display of the Advertisement on the Website in accordance with the terms of the Agreement, and the other online facilities (for example, the late availability offer facility) made available by Independent Cottages to the Advertiser in connection with the Advertisement (as detailed on the Website from time to time);

"Agreement" means the agreement between Independent Cottages and the Advertiser incorporating these Website Advertising Terms, and any amendments to it from time to time;

"Business Day" means any week day, other than a bank or public holiday in England;

"Charges" means the amounts payable by the Advertiser to Independent Cottages under or in relation to the Agreement;

"Effective Date" has the meaning given to it in Clause 2.1;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus and other malicious software attacks and infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Go Live Date" means the date when the Advertisement is first published on the Website;

"Independent Cottages" means Altameric Limited trading as Independent Cottages, a limited company incorporated in the United Kingdom (registration number 04194702) having its registered office at 113 Wrotham Road, Gravesend, Kent DA11 0QP;

"Independent Cottages Content" means all works, materials and content provided by Independent Cottages for incorporation into the Advertisement;

"Prohibited Content" means material that: (a) breaches any applicable laws, regulations or legally binding codes; (b) is liable to give rise to a cause of action against any person in any jurisdiction and under any applicable law; (c) infringes any copyright, database rights, moral rights, design rights or other intellectual property right; (d) is defamatory or infringes any right to privacy or breaches data protection legislation; (e) is obscene, indecent, pornographic or lewd material; (f) breaches the Committee on Advertising Practice Code; or (g) is likely to cause annoyance, inconvenience or anxiety to person;

"Term" means the term of the Agreement; and

"Website" means the website at www.independentcottages.co.uk and any successor website operated by Independent Cottages from time to time.

1.2 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement. Accordingly, no provision of this Agreement will be limited by reference to any particular instances or examples stated in the provision.

2. The Agreement

2.1 The Agreement will come into force upon the earlier of: (a) Independent Cottages receiving the Advertiser's written acceptance of the Agreement (whether by email, fax or otherwise); (b) the Advertiser accepting the terms of the Agreement on the Website; or (c) the Advertiser making the first payment to Independent Cottages in respect of the Advertisement, providing such receipt, acceptance or payment takes place not more than 30 days following the date of issue of the Agreement to the Advertiser (the **"Effective Date"**).

2.2 The Agreement will continue in force indefinitely, unless and until terminated in accordance with Clause 9.

3. Advertising Services

3.1 The Advertiser must provide to Independent Cottages: (a) such information as is reasonably required to compose the Independent Cottages Content for the Advertisement; and (b) at least one photograph of the property to be advertised through the Advertisement.

3.2 Where the Advertiser is invited to give its consent to the content of the Advertisement, the Advertiser must act reasonably in doing so, and must not unreasonably delay the giving of such consent.

3.3 Subject to the Advertiser's compliance with Clauses 3.1 and 3.2, Independent Cottages will: (a) provide the Advertising Services to the Advertiser during the Term; and (b) use reasonable endeavours to publish the Advertisement on the Website within a reasonable period (being no more than 30 days) following the receipt of all consents, information and Advertiser Content required for the Advertisement.

3.4 Where the property that is the subject matter of the Advertisement is temporarily unavailable, the Advertiser must note this using the owner's notice board feature or by making the property unavailable using the calendar facility; and where the property is permanently unavailable, the Advertiser must promptly notify Independent Cottages to enable Independent Cottages to remove the Advertisement from the Website.

3.5 The Advertiser grants to Independent Cottages a non-exclusive, worldwide, royalty-free licence to copy and store the Advertiser Content for the purposes of the Agreement and to publish the Advertiser Content on the Website. The Advertiser also grants to Independent Cottages a right to bring proceedings and recover damages and benefit from any other legal remedy in respect of any infringement by any third party of the intellectual property rights in the Advertiser Content.

3.6 Where the Advertiser wishes to make changes to the Advertisement, the Advertiser must contact Independent Cottages in respect of the changes and Independent Cottages will use reasonable endeavours to implement the changes within a reasonable period (being no more than 30 days) following the Advertiser's request.

3.7 Independent Cottages reserves the right to edit, suspend or remove the Advertiser Content or the Independent Cottages Content from the Website at any time without notifying the Advertiser.

3.8 The Advertiser undertakes: (a) to ensure that all Advertiser Content is accurate and fair; (b) to ensure that the Advertiser Content does not consist of, contain, or link to any Prohibited Content; (c) to ensure that any photographic Advertiser Content does not include any identifiable individual (unless Independent Cottages gives its express written consent); (d) to ensure that where testimonials or other materials provided by a third party are published on the Website, the Advertiser has full authority to grant to Independent Cottages the right to publish those materials in accordance with the terms of this Agreement; (e) promptly to request the removal or editing of any Advertiser Content which ceases to be accurate and fair, or becomes Prohibited Content, for whatever reason; and (f) to ensure that the Advertiser Content is of a quality commensurate with the content published on the Website generally.

3.9 The Advertiser acknowledges that Independent Cottages is not responsible for any inaccuracies contained in the Advertiser Content and Independent Cottages does not audit or verify the correctness of the Advertiser Content.

3.10 The Advertiser acknowledges that it is the Advertiser's responsibility to monitor and manage any enquiries the Advertiser receives in respect of the advertised property (including through the Advertiser's booking and enquiry facility), and that it is the Advertiser's responsibility to ensure that no enquiries in respect of the advertised property are blocked by the Advertiser's spam filters. Subject to Clause 8.1, Independent Cottages will not be liable for any loss or damage arising out of any failure to observe the requirements of this Clause.

3.11 Independent Cottages will use reasonable endeavours to maintain the availability of the Website and the availability of the published Advertisement during the relevant period (subject to scheduled or ad hoc maintenance and any Force Majeure Event affecting Independent Cottages or Independent Cottages' appointed hosting service provider) but Independent Cottages does not guarantee 24/7 availability.

3.12 Independent Cottages does not warrant or guarantee that advertisements will receive any hits or enquiries, that customers are bona fide, or that customers will pay for properties rented. Independent Cottages has no responsibility to become involved in any way in any dispute between the Advertiser and any customer. Subject to Clause 8.1, Independent Cottages will not be liable for any loss or damage caused by any customer of the Advertiser.

3.13 The Advertiser acknowledges that Independent Cottages will not keep a back-up of any data concerning bookings, and that the Advertiser will be responsible for keeping a separate record of such bookings.

4 Charges and payment

- 4.1 The Advertisers must pay to Independent Cottages in accordance with this Clause 4: (a) a one-off registration Charge; and (b) annual Charges.
- 4.2 The amounts of the Charges are as stated on the Website, or such other amounts as Independent Cottages may notify to the Advertiser in advance in writing. (a) The one-off registration Charge; and (b) the annual Charges in respect of the first 12 month period following the Go Live Date, will be invoiced by Independent Cottages at any time after the Effective Date and must be paid within 30 days of the date of the invoice.
- 4.3 Subsequent annual Charges in respect of subsequent 12 month periods will be invoiced by Independent Cottages at or around the relevant anniversary of the Go Live Date, and must be paid within 30 days of the date of the invoice.
- 4.4 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise, and VAT will be payable by the Advertiser in addition to the principal amounts.
- 4.5 Where the Advertiser fails to make payments in accordance with this Clause 4, Independent Cottages may (without prejudice to its other rights under the Agreement or otherwise) suspend the provision of the Advertising Services until such time as the Advertiser pays the outstanding Charges.
- 4.6 For the avoidance of doubt, where the Agreement is terminated and an Advertiser seeks to enter into a new Agreement, an additional registration Charge will be payable (unless Independent Cottages agrees otherwise in writing).

5 Warranties

- 5.1 The Advertiser warrants to Independent Cottages that it has the legal right and authority to enter into and perform its obligations under the Agreement.
- 5.2 Independent Cottages warrants to the Advertiser: (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement; and (b) that it will perform the Advertising Services under the Agreement with reasonable care and skill.
- 5.3 All of the parties' liabilities and obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

6. Intellectual Property Rights

- 6.1 The Advertiser acknowledges that Independent Cottages is the sole owner of all intellectual property rights in the Independent Cottages Content, and that Independent Cottages does not grant a licence to the Advertiser to use the Independent Cottages Content.
- 6.2 Independent Cottages acknowledges that the Advertiser and its licensors are the owners of all intellectual property rights in the Advertiser Content, and that the only licence granted by the Advertiser to Independent Cottages to use the Advertiser Content is that set out in this Agreement.

7. Indemnity

The Advertiser will indemnify Independent Cottages and will keep Independent Cottages indemnified against all damages, losses and expenses (including legal expenses) arising as a result of any breach by the Advertiser of Clause 3.8 of the Agreement.

8. Limitations and exclusions of liability

- 8.1 Nothing in the Agreement will: (a) limit or exclude the liability of a party for death or personal injury resulting from negligence; (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party; (c) limit any liability of a party in any way that is not permitted under applicable law; or (d) exclude any liability of a party that may not be excluded under applicable law.
- 8.2 The limitations and exclusions of liability set out in this Clause 8: (a) are subject to Clause 8.1; and (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.
- 8.3 Independent Cottages will not be liable in respect of any loss of profits, income, revenue, or anticipated savings.
- 8.4 Independent Cottages will not be liable for any loss of business, contracts or commercial opportunities.
- 8.5 Independent Cottages will not be liable for any loss of or damage to goodwill or reputation.
- 8.6 Independent Cottages will not be liable for any losses arising out of a Force Majeure Event.
- 8.7 Independent Cottages will not be liable for any losses of or damage to data or information (including booking data relating to an Advertisement stored on the Website).
- 8.8 Independent Cottages' liability in relation to any event or series of related events will not exceed the total amount paid or (if greater) payable by the Advertiser to Independent Cottages under the Agreement during the 12 month period immediately preceding the event or events giving rise to the claim.

9. Termination

- 9.1 Either party may terminate the Agreement at any time by giving written notice to the other party.
- 9.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party commits any breach of any term of the Agreement.
- 9.3 This Agreement will terminate automatically if the Advertiser fails to pay any Charges by their due date for payment.
- 9.4 Either party may terminate the Agreement immediately by giving written notice to the other party if:
 - (a) the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or
 - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

10. Effects of termination

- 10.1 Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 6, 7, 8 and 10.
- 10.2 Termination of the Agreement will not affect either party's accrued liabilities and rights (including accrued rights to be paid) as at the date of termination.
- 10.3 If the Agreement is terminated by Independent Cottages under Clause 9.1, or by the Advertiser under Clauses 9.2 or 9.4, the Advertiser will be entitled to a refund of any amounts paid to Independent Cottages under the Agreement in respect of the Advertising Services which were to have been provided after the effective date of termination. Such amount will be calculated by Independent Cottages using any reasonable methodology.
- 10.4 Save as provided in Clause 10.3, the Advertiser will not upon the termination of the Agreement be entitled to any refunds of Charges or released from any liability to pay Charges in respect of any 12 month period of Advertising Services commencing before the date of effective termination.

11. General

- 11.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 11.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect.
- 11.3 The Agreement may not be varied except by a written document agreed by or on behalf of each of the parties.
- 11.4 Independent Cottages may freely assign its rights and obligations under the Agreement without the Advertiser's consent to any affiliate of Independent Cottages or any successor to all or a substantial part of the business of Independent Cottages from time to time. The Advertiser may not without the prior written consent of Independent Cottages assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 11.5 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 11.6 The Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of the Agreement. Subject to Clause 8.1, each party acknowledges that no representations or promises not expressly contained in the Agreement have been made by or on behalf of the other party.
- 11.7 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.