



The small print for BIG IDEAS

Queen Mary University of London
Centre for Commercial Law Studies
67-69 Lincoln's Inn Fields
London
WC2A 3JB

qLegal@qmul.ac.uk
www.qlegal.qmul.ac.uk

Client Reference Number: **[Confidential]**

23 November 2021

Privileged & Confidential

By email to: **[Confidential]**

Dear **[Confidential]**

Re: Your appointment with qLegal on 2 November 2021.

How we work

Thank you for attending your appointment with us and for using the services of qLegal at Queen Mary University of London. Although we cannot provide you with representation in any proceedings and do not hold ourselves out to be a firm of solicitors or patent attorneys, our advice is free and we aim to provide the same high standard of service expected in the practice of law. Please note that the legal advice provided is in relation to the laws of England and Wales only. If you require advice outside of this jurisdiction, please contact us.

Summary of the facts and documents you have provided

[Confidential] (the 'Company') is a private company limited by shares registered in England and Wales that has created a social media platform (the 'Platform') which facilitates the **[Confidential]**. This social media platform is set to go live within a week or two. It will have a strip verification process to tackle online abuse.

The Company's objective is to use the Platform for a good purpose, almost like an electronic **[Confidential]**. Through the Platform, **[Confidential]**, and other end users can create **[Confidential]** and **[Confidential]**. **[Confidential]** will be able to make **[Confidential]**. Once an item on the **[Confidential]** meets its **[Confidential]**, the Company will generate a coupon that will allow a person **[Confidential]**. The Company will generate revenue by: (i) retaining 10% of the value of the items fulfilled **[Confidential]**; and (ii) providing marketing services.

We have been provided with the following document:

1. Application Tutorial

Scope of our advice

We will be advising you on general legal provisions you should include in your commercial contracts and also on legal provisions specific to your **[Confidential]** and **[Confidential]** service.

Summary of advice

1. **Contract Provisions:** There are a number of contract provisions that the Company should consider including in its business-to-business contracts. These include:

- Background
- Definitions
- Scope
- Limitation of liability upon termination
- Boilerplate clauses, including force majeure, entire agreement, confidentiality, modification, governing law and jurisdiction, notices, third-party rights, and costs

[Confidential] Contracts: There are a number of contract provisions relating to the **[Confidential]** aspects of the Platform which you should consider using in your contracts. These include:

- Performance obligation
- Payment obligation
- Term and termination
- Limitations and exclusions of liability

Advertising Contracts: There are a number of contract provisions relating to the advertising services proposed to be made available by the Company which you should consider using in your contracts. These include:

- Performance obligation
- Marketing policy
- Payment obligation
- Late payment
- Term and termination
- Limitations and exclusions of liability
- Limitations on advertising

Explanation

For the Company to create legally binding contracts, it is necessary to have certain provisions included. The provisions recommended below were carefully selected and tailored to meet the Company's needs, based on the information you provided us with during the telephone interview.

The first section addresses provisions that are commonly included in commercial contracts and we recommend are included in both the **[Confidential]** and advertising contracts.

The second section addresses provisions that we recommend are used in the Company's contracts relating to the **[Confidential]**.

The third section addresses provisions that we recommend are used in the Company's contracts relating to advertising.

For each provision, we have included suggested drafting for the relevant clause. Many of these clauses are based on provisions suggested in Lexis Nexis or Practical Law. You should review these clauses carefully prior to including any of them in any final form contract.

Section 1: Contract Provisions

What kind of provisions should the Company include in its business-to-business contracts?

The Company should consider including the following provisions in all of its business-to-business contracts.

Background

To provide the other contracting parties a clear understanding of how the Company works, the Company should include a background provision that provides general details on the operation of the Company. An example of this provision is:

*"**[Confidential]** is a private company limited by shares registered in England and Wales that has created a social media platform that facilitates **[Confidential]**. Through the Company's application, **[Confidential]** can create **[Confidential]**. **[Confidential]** will be able to make **[Confidential]** to fulfill **[Confidential]**. Once an item on the **[Confidential]** meets its **[Confidential]**, the Company will generate a **[Confidential]** that will allow a person **[Confidential]**."*

Definitions

In order to ensure that any agreements the Company enters into are coherent, it is important that the Company includes definitions of key terms that are used in that contract. These terms may include:

- Platform (referring to the Company's social media application)
- **[Confidential]**
- Confidential information (any information the other party may discover that the Company wants to keep confidential)
- Advertisements

Limitation of Liability Upon Termination

In the event of contract termination, it is important that the Company limits its liabilities to the other contracting party, so that the Company will not be responsible for any loss of the other party as a result of termination. Therefore, the Company should include the following provision in its contracts:

"In the event of termination, no party shall be liable to the other party, or any third parties, for compensation of loss of prospective profits or anticipated sales."

Boilerplate Clauses

Force Majeure

A force majeure clause should be included to avoid liability for circumstances beyond the Company's control. These circumstances may include governmental acts, orders and restrictions, or other acts beyond the party's control not caused by negligence. The provision for force majeure may be stated as:

"The Company shall not be in breach of the agreement or liable for delay in performing, or failure to perform, any of its obligations under the agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control."

Entire Agreement

To ensure any previous verbal or written agreements are excluded and that it is clear that the contractual terms are only what is written on the page, the Company should consider including the following clause:

"This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter."

Confidentiality

To ensure that the Company protects any information that the Company would like to keep confidential that the other contracting party may come across, the Company should include the following provision:

"Each party shall treat as confidential all Confidential Information received from the other party and shall not disclose the Confidential Information to any third party without written consent from the other party. Each party shall protect the Confidential Information obtained from the other party to the same degree of care it uses for its own trade secret information."

Modification

In order to ensure that no party will be able to modify the agreement without the other's written consent, it is important that the Company include the following provision in its contracts:

"Any amendment of this agreement is invalid unless it is in writing, signed by both parties, and states the nature of the modification, and the provision to which it applies."

Governing Law and Jurisdiction

During the interview, you stated that you would like the laws of England and Wales to apply to any conflicts arising from the agreements the Company enters into. You also stated that the Company would like any disputes to be brought to the courts in London. Based on this information, the following provisions should be included:

“This Agreement shall be governed under the laws of England and Wales. The parties expressly consent to the exclusive jurisdiction and venue of the courts within the city of London, England, to settle any dispute arising out of this agreement.”

Notices

The Company should include a provision that details how and when notices should be considered received. Therefore, the Company should include the following provision:

“All notices, demands or consents required or permitted under this Agreement will be in writing and signed by or on behalf of the party giving it. Notices will be considered delivered and effective when, either: (a) personally delivered to the Company; or, (b) if sent through certified mail, the date the notice has been received by the Company. The addresses for service of notice is or;

(a)[PARTY 1]

(i)Address: [ADDRESS]

(ii)For the attention of: [POSITION OF CONTACT]

(iii)[Email address: [EMAIL ADDRESS]]

(b)[PARTY 2]

(i)Address: [ADDRESS]

(ii)For the attention of: [POSITION OF CONTACT]

(iii)[Email address: [EMAIL ADDRESS]]”

Third-Party Rights

In order to exclude third-party involvement in the Company’s contractual relationships, the Company should include the following provision:

“Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.”

Costs

To ensure that the Company is not responsible for any costs the other contracting party incurs while negotiating contracts, the Company should include the following provision:

“Each party will be responsible for its own costs incurred in connection with the negotiation, preparation, and execution and registration of this agreement.”

Section 2: **[Confidential]** Contract Provisions

What kind of provisions should the Company include in **[Confidential]** contracts?

The Company should include the following provisions in its **[Confidential]** contracts.

Performance Obligation

The Company should include a clause that details the scope of services that the Company will provide. Under the agreements pertaining to the **[Confidential]** aspect of the Company, the Company should use this structure to detail the Company's services, as well as the services provided by the other contracting party:

*"The [third party] will post a **[Confidential]** on the Platform with items the **[Confidential]** will offer. The **[Confidential]** will set a **[Confidential]** target for each item on the **[Confidential]**. Once the **[Confidential]** target is met for a **[Confidential]** item, the Company will generate a **[Confidential]** that will allow a **[Confidential]**. The **[Confidential]** will give an individual presenting the **[Confidential]** with a **[Confidential]** the item the individual wants off of the **[Confidential]** in exchange for taking receipt of the **[Confidential]**. The **[Confidential]** will inform the Company and the Company will pay the **[Confidential]** the amount for the item redeemed."*

Payment Obligation

To ensure that the Company will be paid through its desired payment scheme, the Company should have a provision in its contracts that detail the payment scheme. Such a provision should look like this:

*"The Company will receive a flat rate of ten percent (10%) of all items redeemed using **[Confidential]** generated by the Company. The Company will pay the **[Confidential]** the remaining ninety percent (90%) of the items redeemed."*

Term and Termination

You indicated that under the **[Confidential]** portion of the Company, the Company plans on having set contract terms with the **[Confidential]**. You also stated that you would like the Company to have the option to renew the contract term when a contract comes to an end. Based on this information, the Company should include the following provision in its agreements pertaining to the shared economy aspect of the Company:

"The Agreement will commence in force and effect on [DATE] for a period of [NUMBER OF MONTHS/YEARS]. The term of this Agreement may be renewed for additional [NUMBER OF MONTHS/YEARS] periods upon the mutual written agreement of the parties prior to the end of the term."

Limitations and Exclusion of Liability

We understand that you would like the Company to be protected from liabilities relating to default products provided by **[Confidential]**. Based on this information, the Company should

include the following provision in its agreements related to the **[Confidential]** portion of the Company:

*“In no event shall the Company be liable to **[Confidential]** or any third party for any consequential, incidental, special, indirect, or punitive damages whether arising out of tort (including negligence), breach of contract, or otherwise. The Company shall not be liable for any default products or **[Confidential]** provided to the Company’s Application users by the **[Confidential]**.”*

Section 3: Marketing Contract Provisions

What kind of provisions should the Company include in Marketing contracts?

The Company should include the following provisions in its Marketing contracts.

Performance Obligation

We understand that the Platform will also be used as an advertising platform to generate revenue. This marketing portal specifically is open to advertise a wide range of products across a variety of sectors. If the advertisements meet the Company’s criteria, the advertisements will be displayed on the Platform. A provision such as the following can be included:

“The Advertiser will send the Company the advert to be displayed on the Platform. The Advertiser will ensure that the advert complies with the Company’s marketing policy and the laws of England and Wales. Provided that the advert complies with the above, the Company will display the advert under the agreed upon term and to the agreed amount of people the Advertiser request”

Marketing Policy

We understand that the Company wants to be in a position whereby it can be in control of the advertising from afar. To ensure that the Company has the right to remove adverts not in compliance with its policies or the law, the Company should include the following provision:

“At all times, the Company retains the right to check the Advertiser’s adverts for violation of the Company’s marketing policy. If the Company finds that the advert is in violation of the Company’s marketing policy and/or the laws of England and Wales, the Company retains the right to remove the advert at any time.”

Payment Obligation

The Company is interested in a £1 pay per click scheme for advertising. The Company should consider how the Company will know how the advertiser will pay for the advertisements and when the Company will inform the advertiser how much the advertiser will have to pay. The Company should also consider when the advertiser needs to pay and when the advertiser will actually pay. A provision such as the following should be included:

“The Company will charge on a pay per click scheme at £1 per click. Payment must be made in a timely manner on the agreed date.”

Late Payment

In order to ensure that the Company will be adequately compensated for late payments, the Company should include the following provision:

“All late payments will have an interest at the lesser of: (1) the rate of [__%] per month and (2) the highest rate permissible under the laws of England and Wales. The late party will reimburse the other party for all costs accrued in collecting late payments.”

Term and Termination

During the interview, a set term for advertising contracts was not specified. Therefore, a general provision for the term and termination should be included. The provision can be such as the following:

“The Agreement will commence in force and effect on [DATE] for a period of [NUMBER OF MONTHS/YEARS]. The term of this Agreement may be renewed for additional [NUMBER OF MONTHS/YEARS] periods upon the mutual written agreement of the parties prior to the end of the term.”

The Company also retains the right to refrain from showing advertisements that violate the Company’s policies, and consequently, terminate the contract if the advertiser violates the limitations on advertising clause. Specifically, if the advertisement is for a product that is not compliant with the interests and policies of the Company. A provision such as the following should be included:

“The Company retains the right to terminate any contract for advertising that is not compliant with the Company’s policies.”

Limitations and Exclusion of Liability

The Company should also consider avoiding liability if the product advertised on the portal is faulty. To ensure this, a provision such as the following should be included:

“The Company’s relationship with the product advertised, is strictly providing a platform for the product to be advertised on. By no means is the Company to be held liable if the product advertised is found faulty.”

Limitations on Advertising

We understand there are certain limitations to the type of products you will allow to be advertised on your Platform. To have a definitive provision, it is ideal to define what these products are and to have an exhaustive list. The two products you mentioned specifically that you will not be advertising are alcohol and gambling. To ensure this, a provision such as the following should be included:

“As per its guidelines, the Company will specifically refuse advertisement for specific products including alcohol and gambling. Any instance of advertising these products on the social media platform will result in termination of the contract. The Company will also not be liable for any compensatory fees for an early termination of the contract.”

Next Steps

- Review this letter to ensure you understand our advice.
- Make final decisions on desired contract terms and protections.
- Have final contracts drafted and prepared by lawyers for future agreements.

We hope that the advice provides you with a comprehensive understanding of the legal questions you asked us to address. Should you require any assistance in any future matters, please do not hesitate to contact us.

We would be extremely grateful if you could take a few moments to complete this short form <https://qmul.onlinesurveys.ac.uk/client-feedback-on-qLegal-2021-22>, as your feedback is important to our educational development and the development of our services.

Yours sincerely,

[Confidential]
Student Adviser

[Confidential]
Student Adviser

On behalf of qLegal