

## Dentsu Aegis Network Media Standard Terms and Conditions v6.1 (12/12/2018)

**THESE TERMS AND CONDITIONS** apply between either: (i) Dentsu Aegis Manchester Limited, registered number 2886697, whose registered office is at 10 Triton Street, Regents Place, London NW1 3BF and whose principal office is at 117-119 Portland Street, Manchester M1 6ED; (ii) Dentsu Aegis Leeds Limited, registered number 04625200, whose registered office is at 10 Triton Street, Regents Place, London NW1 3BF and whose principal office is at 6 East Parade, Leeds LS1 2AD; or (iii) Dentsu Aegis Edinburgh Limited, registered number 3349501, whose registered office is at 10 Triton Street, Regents Place, London NW1 3BF and whose principal office is at Capital House, 2 Festival Square, Edinburgh EH3 9SU, with such entity being specified in the Order (“**we**”, “**us**”, “**our**”); and the party named on the Order (“**Client**”, “**you**”, “**your**”).

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions the following words and expressions shall have the meaning given them below, unless the context requires otherwise:

**Advertising Regulations** means the UK Code of Non-Broadcast Advertising and Direct Promotional Marketing (the CAP Code), the UK Code of Broadcast Advertising (the BCAP Code), the Consumer Protection from Unfair Trading Regulations, and the Business Protection for Misleading Marketing Regulations 2008 (all as amended from time to time), and any other codes of advertising standards and Applicable Laws relating to advertising in the United Kingdom or anywhere in world that Client’s advertising appears in any Media procured under this Agreement;

**Affiliate** means a Person engaged to market and promote an organisation’s products or services by placing an electronic link on the Affiliate’s own website, with the aim of encouraging website visitors to Click through to a specific page, product, or service on such organisation’s website;

**Affiliate Expenditure** means the amounts paid, or payable by us to Affiliates and / or Affiliate network operators under this Agreement, and includes amounts owed or paid directly by us under our contract with the Affiliate network or Affiliate and also amounts we pay as your agent for payment pursuant to clause 2.4 below;

**Affiliate Website** means a website operated by an Affiliate, that contains an electronic link to a Website;

**Agency Commission** means the commission certain Media Owners award us in consideration of us saving the Media Owner time and expense of direct sales, direct billing, and liaising with the advertiser. Media Owners that award Agency Commission represent the Agency Commission as a discount off the Media Owner’s gross charges for Media, and we pay the Media Owner’s charges net of Agency Commission;

**Agreement** means the Order, together with these terms and conditions, and any other document you and we agree is incorporated therein;

**Applicable Law** means: (i) any and all laws, statutes, regulations, by-laws, orders, ordinances and court decrees that apply to the performance and supply of the Services or the processing of Client Personal Data, and (ii) the terms and conditions of any applicable approvals, consents, exemptions, filings, licences, authorities, permits, registrations or waivers issued or granted by, or any binding requirement, instruction, direction or order of, any applicable government department, authority or agency having jurisdiction in respect of that matter;

**Click** means where a Person viewing an item of online Media, presses down and releases a mouse (or similar) button such that an electronic link to a Website is activated; and ‘Clicked’ shall be construed accordingly;

**Client Account** means your account with a Media Owner, whether

or not such account operates under our network with such Media Owner;

**Client Content** shall mean all advertisements and/or other marketing materials (including, but not limited to, trademarks, graphic designs, sound production, video, software, data, and marketing strategy documents) appearing in any Media we have procured for you or a third party on your instruction, or that is otherwise published by you, us, or a third party acting on your behalf, and any and all content on the Websites;

**Client Expenditure** means the total amount of all charges paid or payable by you, to media owners in respect of Media procured using Client Accounts, and Media procured under contracts between you and the Media Owner (whether or not we are also a party to that contract);

**Client Personal Data** means personal data provided or made available to us, or collected or created for you, in connection with the Services as described in more detail in a Data Protection Record;

**CRO** shall mean a service whereby we shall devise alternative versions of an agreed page of a Website, and run a test using our software, to establish which version of the page results in the most conversions (or other desired action as agreed between the parties);

**Data Protection Legislation** means all Applicable Laws and codes of practice applicable to the processing of personal data including the GDPR;

**Data Protection Record** means the record that must be completed if the Services involves processing of Client Personal Data. Such record is available from us in such event;

**DP Losses** means all liabilities, including all: (a) costs (including legal costs), claims, demands, actions, settlements, ex-gratia payments, charges, procedures, expenses, losses and damages (including relating to material and non-material damage); and

(b) to the extent permitted by Applicable Law: (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a court or regulatory authority; (ii) compensation to a data subject ordered by a court or regulatory authority; and (iii) the costs of compliance with investigations by a regulatory authority;

**Financial Promotion** means any of your advertising that comprises or includes an invitation or inducement to engage in investment activity (as those terms are from time to time interpreted for the purposes of the FSMA);

**FSMA** means the Financial Services and Markets Act 2000 together with any rules, orders, regulations, codes of practice and delegated legislation made thereunder from time to time;

**GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as applicable as of 25 May 2018, as may be amended from time to time. “**controller**”,

**“data subject”, “personal data”, “processing” and “processor”** have the meanings set out in the GDPR (and related terms such as **“process”** have corresponding meanings);

**Group** means, collectively, the relevant party, and the holding company, and all subsidiaries of such party, and all subsidiaries of such subsidiaries and of the holding company. The terms “subsidiary” and “holding company” shall be as defined by the Companies Act 2006;

**Impression** means a single display of online display Media to a website visitor;

**Keyword** means a specific word or combination of words, that, when entered into a search engine facility, results in a list of links to relevant or related websites;

**Media** means any media that appears on any Media Schedule you have approved pursuant to clause 2.2 below, or any other media agreed between you and us;

**Media Expenditure** means the Media charges as set out on a Media Schedule you have approved (or as we otherwise may agree with you), prior to deducting Agency Commission, save for any Media procured using or under a Client Account, which shall constitute Client Expenditure as defined above. Where the Agency Commission amounts to less than a 15% margin in the Media Expenditure (or where no Agency Commission has been awarded at all), **“Media Expenditure”** shall be grossed up by the amount necessary to include such 15% margin, and **“Media Expenditure”** shall mean such grossed up amount;

**Media Owner** means any vendor from whom we procure Media for you;

**Media Schedule** means any recommendations and / or plan we devised for the purchase of Media for you;

**Order** means any Media Schedule, statement of work, project plan, letter agreement (or other agreement), approved by you or agreed between you and us in writing, by email, or other means, and also any brief or instruction you issue to us, in response to which, we provide services to you;

**Person** means any legal entity, including any private individual, company or corporate body;

**PPC** means a type of online Media whereby we procure sponsored link Media from Media Owners and use certain Keywords in order to ensure that the resulting link to a Website is displayed either above or alongside the general search results;

**PPC Budget** means the maximum Media Expenditure we are permitted to incur in respect of your PPC campaigns, in any month or other period agreed between you and us; such budget is subject to amendment as agreed between the parties, and **“PPC Budget”** includes any such revised budget and any new budget agreed between the parties;

**Processing Instructions** has the meaning set out in clause 7.5(a) of this Agreement;

**Security Incident** means the accidental or unlawful destruction, loss, alteration or unauthorised disclosure of, or access to, Client Personal Data while in the custody of us or a Sub-Processor;

**SEO** means a service designed to increase a website’s relevance to certain Keywords in order to improve that website’s ranking in the natural search results associated with those Keywords;

**Services** means the services we agree to provide to you, as set forth in any Order or as otherwise agreed between you and us, save for any services provided under a separate Media Services Agreement or other similar agreement between us;

**Sub-Processor** means another processor engaged by us for carrying out processing activities in respect of the Client

Personal Data on behalf of you; and

**Website** means a website you own and / or control, in respect of which we provide the Services.

1.2 References to ‘clauses’ are references to clauses to (or of) these terms and conditions, and references to these terms and conditions includes all of their clauses.

1.3 References to any agreement, deed or other instrument, or any applicable laws, statutes, statutory instruments, regulations, non-statutory codes of practice, or guidelines (or any provisions thereof) is to include any prior or subsequent amendments, versions or re-enactments thereof.

1.4 All headings in these terms and conditions are for ease of reference only and shall not affect the interpretation of any terms and conditions herein.

1.5 In this Agreement (including these terms and conditions), references to “liability”, or “liable” are references to liability arising out of or in connection with this Agreement, whether in contract, tort (including negligence), statutory duty, or otherwise.

1.6 In these terms and conditions or in any Order, references to disputes concerning your obligation to pay an amount to us, shall refer to a dispute you raise or have raised, where the allegation or fact on which your dispute is based would, if found to be true and correct, provide you with grounds at law or under this Agreement, to withhold payment from us or would otherwise mean you had no such payment obligation to us, with this Agreement prevailing over applicable law in the event of conflict therewith, unless such prevalence is prohibited at law in which case the relevant applicable law shall prevail. Any reference to an undisputed amount shall be a reference to an amount that is not subject to a dispute described by this clause 1.6.

1.7 References to the singular shall include the plural and vice versa.

1.8 In these terms and conditions, the words ‘including’ and ‘includes’ shall be construed so as to mean ‘including without limitation’, and ‘includes without limitation’ respectively.

## **2 SERVICES**

2.1 We shall provide the Services to you, and all Services we provide to you shall be subject to these terms and conditions and any terms and conditions set forth on any Order.

2.2 By signing or otherwise approving any Media Schedule, or providing, approving, notifying, or proposing a PPC Budget, you are authorising us to procure the Media set forth in that Media Schedule and / procure PPC Media up to the value of such PPC Budget, either in our own name, or if required by the relevant Media Owner (or where set forth in the Media Owner’s terms and conditions) on your behalf acting as your authorised agent at law (hereby appointed). We shall not be liable to you in the event that your delay, or any delay caused by you, prevents us from procuring any Media or bidding on any Keywords.

2.3 If we agree to appoint any Affiliates or Affiliate network operators in respect of your Affiliate marketing campaigns, we may appoint any such Affiliates or Affiliate network operators either in our own name or in your name, acting as your agent (hereby appointed for the purpose of this Agreement), as required by the Affiliate network operator on a case-by-case basis.

2.4 Where you are a liable to pay a Media Owner, Affiliate or Affiliate network operator, or other third-party under a contract with that party, we may agree to receive and pay invoices on your behalf subject to our usual payment terms. In such event, full liability for payment of those invoices remains entirely with you, and no liability for payment shall transfer to us at any time. We are not obliged to

pay any such invoices until you have paid us the full invoiced amount, in cleared funds. For the avoidance of doubt, where we are principal for payment in respect of any contract with an Affiliate or Affiliate network operator (whether or not you are also a party to such contract), we shall pay invoices on our own behalf. You will reimburse us for all amounts paid to Affiliate network operators and / or Affiliates, whether we have made those payments on your behalf or on our own behalf, pursuant to clause 3.1.2 below.

2.5 Where we procure Media for you using a Client Account:

2.5.1 you shall provide all information necessary for us to access the Client Account in order to procure media in your name, or as may otherwise be necessary for our performance of the Services;

2.5.2 we shall automatically become your agent, appointed and authorised to: (i) procure Media from the relevant media owner in your name and on your behalf; and (ii) manage your campaigns using such Client Account;

2.5.3 in respect of any and all media we procure using a Client Account: (i) the Media Owner will invoice you directly unless we agree otherwise; and (ii) you (and not us), shall be contracted directly to such Media Owner.

2.6 Save where otherwise set forth in the Order, you shall pay us an amount equal to the amount of consideration we would have received or benefitted from if that Media had been procured using our account with the Media Owner, including any Agency Commission and / or grossed-up element of the Media Expenditure in lieu of Agency Commission, less any rebates we would otherwise have awarded to you (if any) pursuant to the Order.

2.7 If we agree to procure Media under this Agreement for the purpose of advertising another person's brand or products, whether or not such Media is ultimately for your benefit:

2.7.1 you shall be responsible for the acts or omissions of such persons as if those acts or omissions are yours;

2.7.2 you hereby warrant and represent that you have all necessary rights and consents to instruct or authorise us to procure such Media; and

2.7.3 such person shall not be a party to this Agreement, and we shall have no liability to that person in connection with the Media we have procured or otherwise under this Agreement.

### 3 CONSIDERATION

3.1 You shall pay us all fees and other amounts set forth in the Order, and:

3.1.1 the amount of any and all Media Expenditure;

3.1.2 the amount of any and all Affiliate Expenditure;

3.1.3 the amount of any production costs we incur in respect of your advertising or Media (in the course of our implementation of an Order); and

3.1.4 the amount of our costs associated with any vouchers, inspection, or campaign audit you request, and provided by us and on our behalf.

3.2 Any Agency Commission rebates set out in any Order or other documentation, shall be conditional on you paying the corresponding invoice prior to the due date thereof (as set forth in clause 4.2 below).

3.3 **Industry regulatory bodies:** All Media Expenditure will be subject to a levy of 0.39% to contribute towards the cost of ASBOF, BARB research data, electronic verification of transmission, related computer costs, credit insurance and other associated costs incurred in providing the media service.

3.4 All prices and consideration set forth herein are exclusive of VAT, which we will add to invoices where applicable.

### 4 PAYMENT DUE DATES

4.1 You acknowledge and agree that we do not finance your advertising and that, where we are principal to any contracts with Media Owners or suppliers, we are responsible for payment and are expected to contract in accordance with standard industry rate cards or other standard conditions and contracts. You hereby agree that the rights and liabilities between us and you shall correspond to those between us and any Media Owners or other suppliers, in accordance with standard industry practice.

4.2 Subject to earlier payment being required pursuant to clause 4.7 below or under the provisions incorporated in 4.1 above, you shall pay all invoices for television Media by the 15<sup>th</sup> day of the month following the invoice date, all invoices for online Media by 30<sup>th</sup> of the month following the month in which the invoice is dated, and any other invoices by the 20<sup>th</sup> of the month following the invoice date.

4.3 If we do not receive payment for any invoices on or before the relevant due date set forth in clause 4.2 above, we reserve the right to suspend providing all Services (and any other services we provide to you under any other agreement in effect between you and us) without notice until we receive all such outstanding amounts in full and in cleared funds, whereupon we shall resume providing the Services without unreasonable delay. We shall not be liable to reimburse you for any losses, damages, costs, or expenses (whatsoever, or howsoever caused) you suffer in connection with such suspension, including in the event that, once we have received all outstanding amounts, we are then unable to procure any relevant service from our third-parties or implement the Order, in which case we shall not be deemed to be in breach of this Agreement in any way. You will reimburse us in full for any charges, costs, or expenses (including from third party service providers) we incur in connection with such delayed payment or non-payment.

4.4 If payment is not received by the payment due dates, we reserve the right to charge you interest at the rate of 4% per annum above HSBC plc Base Rate from time to time on any unpaid balance until payment in full is made and interest will be calculated on a daily basis.

4.5 In the event that: (i) you cancel a Media Schedule that you have previously approved (or any Media item we have booked at your request or with your approval); (ii) a Media Owner cancels any Media as a result of any Client Content, a Website, Keywords, or your actions; or (iii) we cancel a Media Schedule as a result of this Agreement terminating for reason of your breach, or under clause 4.7.2, 10.1 or 10.4 of these terms and conditions, you shall:

4.5.1 in respect of Media we have booked or otherwise committed (to the Media Owner) to purchase: reimburse us the amount of all charges and / or penalties the Media Owner levies on us; and,

4.5.2 in respect of all Media contained in the Media Schedule (in consideration of the Media planning services we have already carried out), the amount of Agency Commission, or other commission margin or fees we would have received or retained under clause 3 above if the Media Schedule had not been cancelled.

4.6 As part of our commitment to maximising media value we rigorously pursue compensation complaints for issues such as reproduction and positional problems, however we give no guarantee as to the outcome of such negotiations and you must pay in full and by the due date for bookings made, regardless of any subsequent compensation achieved.

4.7 In view of our substantial financial commitment to third parties in the course of procuring Media for you, we will arrange and maintain suitable credit insurance cover in respect of our liabilities

to third parties and your liabilities to us. Where, for any reason this insurance cover is either refused, withdrawn, revised or inadequate to cover our liabilities, we shall be entitled to:

4.7.1 require: (i) payment (in cleared funds) in advance of booking or committing to any Media, or providing any Services; or (ii) you to arrange for suitable financial guarantees to be granted to us that are (at our sole discretion) sufficient to meet your liabilities to us; and

4.7.2 without incurring further liability on our part: (i) cancel existing media bookings that have not appeared in the media; (ii) automatically suspend all of our obligations in relation to the booking of media and committing to other expenditure under this Agreement; and/or (iii) terminate this Agreement forthwith upon written notice to you. We shall not be responsible for any losses or additional costs you incur as a result of us exercising any of our rights or remedies available under this clause 4.7 or otherwise available at law.

4.8 In the event that we agree to provide credit or other payment terms not set forth in clause 4.7.1 above, despite credit insurance cover being refused, revised, or withdrawn, such payment terms and / or credit shall be provided at our sole discretion, and we reserve the right to withdraw such payment or credit terms at any time, and without notice. Our granting of such payment or credit terms contemplated in this clause 4.8 shall not constitute a waiver of any of our rights or remedies set forth in clause 4.7.1 above.

4.9 You may not withhold payment of any invoice or other amount due to us by reason of any right of set-off or counterclaim which you may have or allege to have for any reason whatsoever.

4.10 In the event that you wish to dispute any amount we have invoiced to you, you shall do so in writing no later than the payment due date according to clause 4.2 above. We and you shall work together in good faith to promptly resolve such dispute. Any invoices not disputed in accordance with this clause 4.10 shall be deemed accepted by you, and shall be paid in accordance with clause 4.2 above.

## 5 LIABILITY

5.1 We shall not be liable for any delay in or omission of publication or transmission or any error in any advertisement, save where the same results from our negligence or default.

5.2 Media Owners and other third party suppliers have their own terms and conditions ("T&Cs"), and you will abide by such T&Cs on our behalf as if you were the buying party under those T&Cs. The T&Cs will apply to this Agreement under which the Media is procured or Services provided, in respect of the services provided by such persons set forth above, and shall prevail in the event of any conflict with this Agreement. Our liability to you shall not exceed the amount we receive from the Media Owner or other third party in compensation for any default or breach by any such persons or any other loss or damage arising out of or in connection with the services procured from those persons, save to the extent that we are at fault. You shall reimburse us in full for any loss, damage, costs, or expenses ("Loss") payable by us to any Media Owner, Affiliate, Affiliate network operator, or other third party, in connection with or arising out of the Services or the T&Cs, save to the extent that such Loss has been caused by our act or omission. We will obtain the relevant T&Cs for you to review if you request.

5.3 If we fail to comply with any obligation contained in this Agreement (including these terms and conditions) due to war, strikes, industrial action short of a strike, lock outs, fire, blockade, import or export embargo, natural catastrophes or other obstacles over which we have no reasonable control, we shall not be held

responsible for any loss or damage you incur as a result of such failure, and we shall not be deemed to be in breach of such obligation or this Agreement.

5.4 Nothing in these terms and conditions or this Agreement shall limit either party's liability to the other party for fraudulent misrepresentation or death or personal (physical) injury resulting from its negligence or the negligence of anyone for whom it is vicariously liable under the laws of England and Wales.

5.5 Subject to the provisions of clause 5.4 above and clause 5.6 below:

5.5.1 our total aggregate liability to you under this Agreement shall be limited to the lesser of: (i) the amount of the consideration paid or payable by you to us for Services provided in the 12 months immediately preceding the event giving rise to the relevant claim; or (ii) the total amount already paid by you to us for the Services during this Agreement up to the date on which the event giving rise to the claim. For the avoidance of doubt, "consideration" in this clause 5.5.1 excludes amounts paid or payable by us to third parties, including, but not limited to, Media Owners, Affiliates, and Affiliate network operators; and

5.5.2 we shall not be liable to you under this Agreement for any loss of actual or anticipated income, profits, business, or contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether in tort (including negligence), contract, breach of statutory duty, or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

5.6 Our total liability to you arising out of or in connection with respect of any Media booking, Statements of Work, PPC Budget, Affiliate marketing campaign or other Services, shall be limited to the consideration paid or payable by you to us in respect of such Service, Media booking, PPC Budget, Statements of Work, or Affiliate marketing campaign, pursuant to clause 3 of these terms and conditions, and as set forth in the Order (excluding amounts paid or payable by us to third parties, including, but not limited to, Media Owners, Affiliates, and Affiliate network operators).

5.7 Save to the extent that we are at fault, you shall hold us harmless in respect of any claims by any third party contracted or otherwise engaged by you, including but not limited to Media Owners, Affiliates, or Affiliate network operators, and shall indemnify us against any loss, damage, cost, and expense (including reasonable legal costs and expenses), we incur in connection with any such claims.

5.8 You will abide by all regulations and rulings of the Advertising Standards Authority, and any other codes of advertising standards laid down, in order to ensure that all advertising, in respect of which we carry out any Media booking or procure any third party services, complies in all respects with all Advertising Regulations and Applicable Laws, and shall be decent, honest and truthful.

5.9 All briefs and instructions you give us shall be clear, and shall contain all relevant facts about a product or service, such briefs shall be accurate and in no way misleading and you will provide us with factual evidence in respect of product or advertising claims if so requested in order to satisfy any appropriate authority or regulator responsible or involved in the enforcement of any Advertising Regulation or Applicable Law.

5.10 You warrant and represent that:

5.10.1 Client Content shall not:

- (a) be false or misleading, indecent, libellous, or unlawful;
- (b) contain any Financial Promotion as defined in the FSMA;
- (c) infringe or violate any intellectual property rights of any third party; and

(d) harm or adversely affect the operation of the website, computer network or other equipment of any third party and/or Media Owner.

5.10.2 all Websites includes a privacy policy that complies with applicable privacy and data protection legislation.

5.11 You shall indemnify us and hold us harmless against any and all loss, damage, costs or expenses arising from any claims (whether formal or otherwise), suits, or proceedings resulting from or in connection with any Client Content, save to the extent that such loss or damage has arisen due to our use of the Client Content: (i) in breach of this Agreement or contrary to your explicit instructions; or (ii) other than as permitted by you or this Agreement, and you shall also indemnify us against all claims, suits or proceedings resulting from or in connection with your breach of your obligations or warranties under this Agreement.

5.12 You hereby acknowledge that the placement of Client Content may be subject to a Media Owner's terms and you hereby consent to abide by those terms in order that the Services may be delivered.

5.13 You shall reimburse us for any late copy charges, or, media cancellation charges imposed on us as a result of your requirements, actions or instructions or as a result of the contents of advertising materials provided.

5.14 It is a condition of this Agreement that we shall not incur any liability in connection with any of your advertising, and / or any contracts between you and any third party, including any Media Owner, Affiliate, or Affiliate network operator and (save where we are at fault) you shall hold us harmless in respect of any claims by such third party, and shall indemnify us in full against any loss, damage, cost, and expense, we incur in as a result of any such claims.

5.15 Where we provide SEO services, we shall provide the SEO services using reasonable care and skill; however we make no other warranty (express or implied) whatsoever in connection with the SEO services. Specifically (but without limitation), we do not guarantee that any Website will achieve any specific position within the natural search results in respect of any search engine.

5.16 Where we agree to provide you with forecasts in relation to the performance of Media procured under this Agreement, we shall use reasonable care in the preparation of such forecasts; such forecasts may include, without limitation:

- a) the number, proportion and type of person likely to be exposed to the campaign;
- b) the number of exposures each person is likely to receive; and
- c) the cost of achieving such exposures,

however, these are matters which are ultimately beyond our control. We give no warranties as to the accuracy of forecasts or as to the figure actually occurring and no liability shall attach to it in respect of any losses you or any third party suffers in connection with your reliance on such forecasts.

## 6 APPROVALS AND AUTHORITY

6.1 Both parties hereby agree that we shall not be liable to you in the event that any delay by (or caused by) you prevents us from purchasing or booking any of the Media contained in any Media Schedule, or providing any of the Services.

6.2 We will comply with any requests you make to amend or cancel contracts entered into on your behalf provided that such alteration is permissible within the terms of such contracts, and provided that you shall indemnify us for all loss and damage, claims, proceedings, charges or expenses that arise as a result of such amendment or cancellation, including retrospective rate adjustments, cancellation

charges or lower discounts from the Media Owner; you will be required to reimburse us for any such additional expenses and costs incurred during and after the termination of this Agreement and compensate us as provided under clause 4.5 above.

6.3 We may sub-contract to specialist operations within our Group and to associated operations as necessary for the performance of this Agreement, but notwithstanding any sub-contracting we shall remain liable for any act or omission of any such sub-contractor.

6.4 You shall be responsible for the content of all Media (and the production and supply thereof), and copy rotation in accordance with the relevant Media Schedules, and where we agree to liaise with your nominated agents in this respect, you shall be ultimately responsible for the acts or omissions of such agents, and such agent's compliance with requests for information and/or assistance we make in order to fulfil our obligations set out herein.

6.5 You hereby grant us with a non-exclusive, royalty free licence to use the Client Content and any other material provided by you or on your behalf, to the extent necessary to allow us to perform the Services, which shall include the right to sub-licence the same to Media Owners, suppliers and sub-contractors in connection with the performance of any part of the Services, including without limitation for the purpose of seeding, posting, distributing or displaying Client Content or other material, or inserting or procuring the placement of links.

## 7 DATA PROTECTION

7.1 If the Services involve processing of Client Personal Data, the parties will ensure that a Data Protection Record is completed before such processing commences and the provisions of this clause 7 shall apply.

7.2 In respect of any processing of Client Personal Data carried out, the parties agree that we are the processor and that you are the controller.

7.3 The parties shall comply with and process all Client Personal Data in accordance with applicable Data Protection Legislation.

7.4 A Data Protection Record:

- (a) describes the processing of Client Personal Data permitted in connection with this Agreement;
- (b) lists the Sub-Processors (if any) who you agrees may process Client Personal Data; and
- (c) sets out the circumstances (if any) in which you agree Client Personal Data may be disclosed to a country outside the European Economic Area.

7.5 We shall:

- (a) unless Applicable Law requires otherwise, only process Client Personal Data on and in accordance with your documented instructions as set out in this Agreement or otherwise in writing ("**Processing Instructions**");
- (b) unless prohibited by Applicable Law, notify you if Applicable Law requires us to process Client Personal Data other than in accordance with Processing Instructions (such notification to be given before such processing commences); and
- (c) notify you if, in our opinion, the processing of Client Personal Data in accordance with Processing Instructions infringes Data Protection Legislation.

7.6 We shall not permit any Sub-Processor to process Client Personal Data without:

- (a) your prior written approval (not to be unreasonably withheld, conditioned or delayed) (such approval having already been provided in respect of those Sub-Processors listed in a Data Protection Record); and

(b) entering into a contract which binds the Sub-Processor to substantially similar obligations with respect to the processing of Client Personal Data as to which we are bound by this Agreement, and

we agree that if a Sub-Processor fails to fulfil its obligations under the contract required by clause 7.6(b) of this Agreement we shall remain fully liable to you for the Sub-Processor's performance.

7.7 After the business purposes for which Client Personal Data was processed have been fulfilled (or earlier upon your written request) we shall, at the your option, either delete or return all Client Personal Data and delete any existing copies of the same (unless storage of such copies is required by Applicable Law).

7.8 You warrant and represent that:

- (a) the processing of Client Personal Data by you will be carried out in accordance with Data Protection Legislation;
- (b) we are entitled to process Client Personal Data pursuant to this Agreement for the purpose of providing the Services and such use will comply with Data Protection Legislation;
- (c) all Client Personal Data provided by us to you is necessary, accurate and up-to-date;
- (d) all Processing Instructions shall at all times be in accordance with Data Protection Legislation; and
- (e) it is satisfied that: (i) our processing operations are suitable for the purposes for which you propose to use the Services and engage us to process Client Personal Data; and (ii) we have sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Legislation.

7.9 We shall, without undue delay, notify you if:

- (a) we become aware of a Security Incident; or
- (b) we receive a request from or on behalf of a data subject of Client Personal Data to exercise any of the rights given to data subjects by Data Protection Legislation.

7.10 We shall (at your expense) provide such further information and assistance as you reasonably require in handling and responding to such notifications in accordance with its obligations under Data Protection Legislation.

7.11 Subject to reasonable written advance notice from the you, we shall:

- (a) permit you to conduct (and shall contribute to) audits and inspections of our systems and processes in relation to the processing of Client Personal Data subject to you ensuring:
  - (i) that such audit or inspection is undertaken during normal business hours and with minimal disruption to our business and the business of other clients of us; and (ii) that all information obtained or generated by you or your auditor(s) in connection with such audits and inspections is kept strictly confidential (save for disclosure to a regulatory authority or as otherwise required by Applicable Law);
- (b) give you such information as is reasonably necessary to verify that we are in compliance with our obligations under Data Protection Legislation; and
- (c) co-operate and assist you with any data protection impact assessments and consultations with any regulatory authority that you reasonably consider are relevant pursuant to Data Protection Legislation in relation to the Client Personal Data.

7.12 The cost of such audit, inspection, provision of information or data protection impact assessment shall be borne by you.

7.13 You may require us to conduct an audit or inspection of the Sub-Processor's systems and processes in relation to the

processing of Client Personal Data. The cost of such an audit or inspection shall be borne by you.

7.14 You shall indemnify and keep indemnified us in respect of all DP Losses suffered or incurred by, awarded against or agreed to be paid by, us and any Sub-Processor arising from or in connection with any:

- (a) non-compliance by you with Data Protection Legislation;
- (b) processing carried out by us or any Sub-Processor pursuant to any Processing Instruction that infringes Data Protection Legislation; or
- (c) breach by you of any of its obligations under this Agreement, except to the extent that the Agency is liable under clause 7.15.

7.15 Subject to clause 5 and clause 7.14, we shall indemnify you for DP Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with this Agreement:

- (a) only to the extent caused by the processing of Client Personal Data under this Agreement and directly resulting from the our breach of this Agreement; and
- (b) in no circumstances to the extent that any DP Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of this Agreement by you.

## 8 CONFIDENTIALITY

8.1 Each party shall hold in strict confidence and not disclose, either directly or indirectly, to any third party any and all confidential information, know-how, media plans, negotiated media rates or price arrangements, marketing surveys and data, marketing research information, and other data pertaining to the other party's affairs, business, products, services, method of carrying on business, including all documentation that may become available to it in the operation of this Agreement, without the prior written authority of the other party both during the subsistence of this Agreement and thereafter. For the avoidance of doubt, "third party" shall not include any of our Group companies or associated companies to whom we may occasionally divulge information where necessary for the performance of this Agreement.

8.2 Either party may disclose the other party's Confidential Information if it is legally compelled to so by a court order, or by order of a regulatory authority, governing body or other competent authority, provided that unless prohibited at law, it has first notified the other party of the intended disclosure and the intended content of the disclosure, and given the other party a reasonable opportunity to review the relevant order with a view to challenging the requirement to disclose such Confidential Information, limiting the extent of the disclosure, and / or agreeing the time and date on which the disclosure will occur.

8.3 We acknowledge our responsibility to, during the term of this Agreement, treat in complete confidence all the marketing and sales information and statistics you supply to us in the course of our provision of the Services.

8.4 Obligations of confidentiality set forth in this clause 8 shall be in effect during the validity of this Agreement and for a five (5) year period following its termination. The parties will not use any such confidential information (as referred to in this clause 8) provided by the other party for any purpose other than to perform its obligations under this Agreement or disclose it to anyone other than its own employees.

8.5 You shall not, and shall not permit your group companies to, use a Media Schedule or any other plan, proposal, or other document we devise or draw up, in order to procure or buy media from a third-party, or obtain a quotation from a third-party, without

first: (i) obtaining our written consent; and (ii) reaching an agreement with us as regards appropriate remuneration for us.

8.6 The provisions of clauses 8.1 to 8.4 above shall not apply to any information which: (i) is in the public domain other than by a breach of this clause 8; (ii) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; (iii) is obtained from a third party who is lawfully authorised to disclose such information; or (iv) the receiving party can prove was independently developed by itself without the use of the disclosing party's confidential information.

8.7 As between the parties: we acknowledge your ownership of any materials you or your representatives provide to us in connection with this Agreement, and you acknowledge our ownership of any materials we or our representatives provide to you in performing this Agreement, and you hereby acknowledge that we provide and / or generate such materials strictly for the purpose of provision of the Services to you and for no other purpose (unless subject to a specific written agreement between the parties to the contrary). Each party acknowledges that the other party's materials (including the information contained therein) are subject to the confidentiality and intellectual property rights provisions of this clause 8.

8.8 Both parties agree that, subject always to specific written agreement between the parties to the contrary, all copyrights, design rights, database rights, know-how and all other intellectual property rights of whatsoever nature which arise as a result of this Agreement shall belong to us absolutely and from the outset. Any express, de facto or implied licences we give to you to use any of our intellectual property rights (whether such intellectual property rights are pre-existing or arise as a result of this Agreement or otherwise) shall, in default of specific written agreement to the contrary, lapse forthwith upon the expiry of or termination of this Agreement for any reason.

## 9 NOTICES

Service of all notices which either party is required or may desire to give the other party hereunder shall be given by addressing the communication to the appropriate individual at that party's principal place of business or registered address (as applicable) and may be given by signed-for mail, courier, or personal delivery. Such notices shall be deemed served (i) on the date on which the notice is signed for if delivered by signed for mail or courier, or (ii) immediately if served personally.

## 10 TERM OF AGREEMENT

10.1 Orders are non-cancellable by either party. Notwithstanding the foregoing, either party may immediately terminate the Agreement by giving written notice to the other party if:

10.1.1 the other party commits any material breach of this Agreement or any provisions thereof, and, if the breach is capable of remedy, fails to remedy it within 30 days after being given written notice giving full particulars of the breach and requiring it to be remedied; or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of that other party; or that other party becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986); or that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such a manner that the company resulting from that company effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement); or that other party ceases, or threatens to cease, to carry on business.

10.2 Upon termination of this Agreement for whatever reason, you shall pay to us all Media Expenditure, and other sums due in respect of Services performed and expenditure incurred or committed to by us up to the date of termination, and any cancellation fees, late copy charges, and other expenses we have incurred in connection with those Services.

10.3 For the purposes of clauses 10.1 and 10.2 above, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance and time of performance is not of the essence in respect of any part of this Agreement.

10.4 We may terminate this Agreement, and any other agreements in effect between you and us, immediately on providing written notice to you in the event that:

10.4.1 any invoices remain outstanding more than 30 days subsequent to the due date thereof, except where such invoices are properly and validly disputed in good faith; or

10.4.2 you materially breach any other agreements in effect between you and us, or any provision thereof.

## 11 GENERAL

11.1 Each of the provisions of this Agreement is severable and distinct from the others. Any provision of this Agreement that is or becomes void or unenforceable shall to the extent of such invalidity or unenforceability be deemed not to form part of this Agreement and shall not affect any other provision.

11.2 This Agreement shall not be assignable or transferable by either party to a third party without prior written consent of the other, and shall be binding upon the parties and their respective successors and permitted assigns. Notwithstanding the foregoing, we shall have the right to assign our rights under, and / or novate or otherwise transfer this Agreement to a member of our Group, upon written notice to you.

11.3 This Agreement (including any schedules, appendices and addenda thereto) is the entire agreement between us and you in respect of the Services and supersedes all prior arrangements, representations (except fraudulent misrepresentations), or understandings between the parties.

11.4 These terms and conditions are supplemental to any Media Services Agreement or other agreement under which the Services are provided (if any). In the event of any inconsistency or conflict between the terms and conditions of any such agreement and these terms and conditions, these terms and conditions shall prevail.

11.5 You hereby represent and agree to each of the following: (i) you shall not purport or attempt to incorporate any terms and conditions, whether on a purchase order, an invoice, or otherwise in respect of or in connection with the Services ("**Client Terms**") into this Agreement or supersede this Agreement or any provisions thereof with any Client Terms; (ii) any Client Terms issued by you or on your behalf shall have no effect whatsoever, and are hereby excluded to the fullest extent, regardless of whether such Client Terms are provided prior to or subsequent to the date of the Order; (iii) any provisions of any Client Terms that state that such Client Terms prevail over or supersede any previous or other terms and conditions agreed between the parties, or would otherwise have the effect of superseding this Agreement are hereby excluded and shall have no effect whatsoever; and (iv) to the extent that Client Terms are deemed to have any effect, notwithstanding the provisions of this clause 11.5, the provisions of this Agreement shall prevail in the event of a conflict therewith.

11.6 Any and all rights conferred to third parties under the

Contracts (Rights of Third Parties) Act 1999 are hereby excluded to the fullest extent permitted by law.

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

irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in relation to all such matters.