

## Presto Standard Terms and Conditions v.1 (150620)

**THESE TERMS AND CONDITIONS** apply between either: (i) Dentsu Aegis Manchester Limited, registered number 02886697, whose registered office is at 10 Triton Street, Regents Place, London NW1 3BF and its principal place of business 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 its principal place of business at 6 East Parade, Leeds LS1 2AD; or (iii) Dentsu Aegis Edinburgh Limited, registered number 03349501, whose registered office is at 10 Triton Street, Regents Place, London NW1 3BF and its principal place of business at Capital House, 2 Festival Square, Edinburgh, EH3 9SU; (iv) Dentsu Aegis London Limited, registered number 01939690, whose registered office and principal place of business is at 10 Triton Street, Regents Place, London NW1 3BF, with such entity being specified in the Order ("**Agency**", "**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:

**Agency Background Materials** means any graphic design, copy writing, animation, sound production, video, graphic production, software, code, data, marketing strategy documents, advertising materials and other creative or marketing materials created, developed and/or provided by us (or its licensors, agents or sub-contractors) which are proprietary to us (or our licensors) or which are in existence prior to the commencement of the Order;

**Agreement** means an 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;

**Break Date** means a date (if any) specified on an Order, on which you or us may terminate this Agreement for any reason (or for no reason) subject to the service of prior written notice set forth on the Order;

**Campaign(s)** means advertising campaigns set out in an Order;

**Client Content** means all advertising, promotional and/or other marketing materials (including but not limited to trade marks, graphic design, copy writing, data, databases and customer lists, animation, sound production, video, software, data, marketing strategy documents, materials in relation to competitions run by the Client, weblinks and hyperlinks) supplied by the Client (and/or any third party acting on behalf of the Client) to us pursuant to this Agreement;

**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;

**Confidential Information** means know-how, media plans, negotiated rates or price arrangements with third parties, 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;

**Commencement Date** means the date the Order takes effect,

as set forth therein;

**Contract Period** means the term of this Agreement, as set forth on the Order or otherwise agreed between you and us;

**Contract Year** means a one year period commencing on the Commencement Date or an anniversary thereof;

**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;

**Deliverable** means the advertising, creative and other materials which are to be provided by us as specified in an Order, including Agency Background Materials, Developed Materials and Third Party Materials where applicable;

**Developed Materials** means any Intellectual Property Rights provided or generated by us in performing the Services under this Agreement;

**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;

**Fee** means the charges for the Services as set out on the Order;

**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;

**Intellectual Property Rights** copyrights, topography rights, software rights, database rights, design rights, patents, trademarks, service marks or domain names (whether or not any of the same are registered or applications have been filed for registration of any of the same) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of the same which may subsist anywhere in the world;

**Order** means any project plan, letter agreement, statement of

work (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;

**Processing Instructions** has the meaning set out in clause 8.5(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;

**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 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

1.2 Clause headings shall not affect the interpretation of this Agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.

1.11 A reference to writing or written includes email.

1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.13 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document, in each case as varied from time to time.

1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2 OUR ROLE

2.1 We are appointed on an exclusive basis to provide the

Services and produce the Deliverables for your Campaign(s) set out in the Order, in accordance with the agreed Order.

2.2 We will use reasonable endeavours to provide the Services and Deliverables in accordance with any project timescales set out in an Order. We will not be obliged to perform any work until the relevant Order has been signed by both parties.

2.3 We will provide the Services and Deliverables with reasonable skill and care and in accordance with the terms of this Agreement. We will give you full and clear instructions as to the Client Content we reasonably require for the purposes of performing the Services and providing the Deliverables.

2.4 We shall:

(a) apply such time, attention, and reasonable skill and care as may be necessary or appropriate for its proper performance of the Services and provision of the Deliverables;

(b) comply with all lawful and reasonable directions regarding the Services and Deliverables communicated to it from time to time by you (provided such directions do not materially deviate from or add to an Order and any such material amendment must be agreed); and

(c) keep Client Content reasonably safe and secure while they are in our possession or control.

2.5 If at any time we become aware that we may not be able to perform the Services or deliver any Deliverables by any estimated date set out in the applicable Order (or any other timeframe agreed by the parties in writing), we will promptly notify you and give details of the reasons for the delay.

## 3 CONSIDERATION

3.1 You shall pay us: (a) the Fee; (b) any third party costs (save where the Order expressly states such costs are included in the Fee); (c) any other amounts set forth in the Order including amounts agreed in respect of any Services we provide that are not set forth on the Order; and (d) any other amounts agreed between you and us from time to time.

## 4 INVOICING, PAYMENT TERMS AND CREDIT INSURANCE

4.1 Subject to earlier payment being required pursuant to clause 4.6 below, you shall pay all invoices no later than 30 days following the invoice date.

4.2 Should Agency not receive payment of any amounts invoiced by Agency under this Agreement, within 7 days of the due date of the relevant invoice, Agency reserves the right to suspend providing the Services and Deliverables and any other services Agency has agreed to provide to Client (whether or not provided under this Agreement) without notice, until Client pays all such outstanding amounts in full and in cleared funds, whereupon Agency shall resume providing the Services without unreasonable delay. Agency shall not be liable to reimburse Client for any losses, damages, costs, or expenses (whatsoever, or howsoever caused) Client suffers in connection with such suspension, including in the event that, once Agency has received all outstanding amounts, Agency is then unable to procure any relevant service from its third-parties (in which case Agency shall not be deemed to be in breach of this Agreement in any way). Client will reimburse Agency in full for any charges, costs or expenses (including from third party service providers). Agency incurs connection with such delayed or non-payment.

4.3 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.

4.3.1 The Agency may arrange and maintain, at the Agency's sole cost, credit insurance cover. Where, for any reason, the Agency becomes aware that this insurance cover is, or is likely to be, either refused, withdrawn, revised or inadequate to cover the liabilities of Client to Agency, the Agency will promptly inform Client of this in advance and the parties will make reasonable efforts to agree, and where necessary implement, alternative solutions, including a pre-payment plan. If, following such discussions, credit insurance is not actually refused, withdrawn, revised or inadequate, then neither of the parties shall be obliged to implement any such alternative solutions. However, if credit insurance cover is refused, withdrawn, revised or inadequate and alternative solutions cannot be agreed upon within 14 days of notice from the Agency, then the Agency shall be entitled to invoice Client for any outstanding Fees. If Client is unwilling and/or unable to provide advance payment or arrange for suitable (to the reasonable satisfaction of Agency) assurances, Agency and/or relevant Agency Affiliate shall be entitled to: (a) automatically suspend all of their obligations in relation to the provision of Services and Deliverables under this Agreement; and/or (b) terminate this Agreement.

4.4 All amounts expressed in this Agreement to be payable by the Client to the Agency are exclusive of any VAT (or any other equivalent tax) which may become chargeable on this supply. If VAT becomes chargeable on the supply, the Client will pay to the Agency (in addition to and at the same time as paying any other consideration for the supply) the VAT properly charged on the supply on receipt of a valid VAT invoice.

4.5 The Client will bear all other taxes, foreign exchange costs and levies and charges, statutory or otherwise, including but not limited advertising taxes and levies related to the Services which may be in force from time to time.

4.6 Client may not withhold payment of any invoice or amount due to Agency for any reason whatsoever, including for reason of any right of set-off or counterclaim which Client may have or allege to have.

4.7 The Agency shall have the right to set off, deduct or withhold from any liability owed to the Client under or in connection with the Agreement any liability of the Client to the Agency.

4.8 You acknowledge and agree that we incur some or all of our costs (both internal and external) in Great British Pound (GBP) and that the liability for the risk posed by fluctuations in currency exchange rates shall be borne by you. Where the Parties agree that we will invoice Fees in a currency other than GBP ("**Invoicing Currency**"), we shall convert the Fees from GBP to the Invoicing Currency and the parties agree that:

4.9 any such Fees shall be converted from GBP to the Invoicing Currency according to the prevailing rate of exchange between GBP and the Invoicing Currency on the date of invoice, or, where the invoiced item relates to an item of previous expenditure by us, the date on which such expenditure was incurred;

4.10 the amount of the Fees payable pursuant to any invoice when converted to the Invoicing Currency may be greater than the amount of the Fees quoted or agreed in this Agreement due to fluctuations in currency exchange rates. You agree to pay the difference between these respective amounts to us in accordance with the terms of this Agreement; and

4.11 if the amount of the Fees payable when converted to the Invoicing Currency increases between the date of invoice and the date on which you actually pay the amounts due under the invoice due to fluctuation in currency exchange rates, then we

may invoice you for the difference and you agree to pay the difference to us in accordance with the terms of this Agreement.

4.12 For the purposes of clause 4.12, references to an exchange rate on a particular date shall be deemed to be the opening rate in London for that day as quoted by the Financial Times ([www.ft.com](http://www.ft.com)).

## 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 It is expressly understood and agreed between both parties that while Agency undertakes to use all reasonable care in the preparation of estimated and target figures, as regards: (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, these are matters which are ultimately beyond Agency's control, and no warranties are given by Agency as to the accuracy of such estimates or targets or as to the figure actually occurring and no liability shall attach to Agency in respect of any losses suffered by the Client or by any third party by reason of the Client's reliance on such estimates/targets.

5.3 Subject to clause 5.5 and except to the extent any liability arises from the breach of this Agreement by negligence or wilful misconduct of a party, for which the harmed party will not be liable to the other party, each party's aggregate liability under or in connection with this Agreement in each Contract Year, whether arising from contract, negligence, under any indemnity or otherwise, will be limited to the Fees received by Agency under this Agreement from the Client in the relevant Contract Year when the breach occurred.

5.4 In no event shall either party be liable to the other for any: (a) loss of actual or anticipated income or profits, loss of anticipated savings, loss of contracts or business opportunity, loss of goodwill, loss or corruption of data or loss of reputation (whether direct or indirect); or (b) special, indirect, or consequential loss or damage of any kind, howsoever arising and whether caused by tort (including negligence), breach of contract, under any indemnity or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

5.5 Nothing in this Agreement shall exclude or limit either party's liability for: (a) liability arising from death or injury to persons caused by negligence; (b) breach of terms regarding title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; (c) fraud or fraudulent misrepresentation; (d) anything else which for which liability cannot be excluded or limited at law; and (e) the payment of Fees.

5.6 Where one party ("**Indemnifying Party**") agrees to indemnify and keep the other party ("**Indemnified Party**") indemnified under this Agreement, such indemnity is subject to the Indemnified Party complying with the following process in the event that a third party claim arises: (a) the Indemnified Party must promptly notify the Indemnifying Party in writing of such claim; (b) the Indemnified Party must not make any admission of liability, settlement or compromise without the prior written consent of the Indemnifying Party; (c) the Indemnified Party must give the Indemnifying Party express authority to conduct all negotiations and litigation and to defend and/or settle all litigation arising from such claim, provided that the Indemnifying Party regularly consults the Indemnified Party on the conduct and

defence of the claim; (d) the Indemnified Party must provide the Indemnifying Party with all available information and assistance in relation to such claim as the Indemnifying Party may reasonably require at the Indemnifying Party's cost and expense; and (e) if within ninety (90) days after the Indemnifying Party's receipt of notice of any such claim, the Indemnifying Party fails to take action to defend or settle such claim, the Indemnified Party may at the Indemnifying Party's expense undertake the defence, compromise or settlement of the claim as it sees fit.

## 6 INTELLECTUAL PROPERTY

6.1 The Client agrees to give a clear brief to Agency and ensure that all the facts given about a product or service are accurate and in no way misleading and the Client will provide Agency with factual evidence in respect of product or advertising claims if so requested in order to satisfy any appropriate authority (e.g. the ASA or Clearcast on behalf of Ofcom).

6.2 You warrant that Client Content shall not:

6.2.1 infringe any copyright, performing rights, trade mark or other intellectual or proprietary right of any third party, are not false, misleading, indecent, or unlawful and do not constitute defamation of, or a misuse of any confidential information or infringement of rights of privacy of, any third party;

6.2.2 does not contain software viruses or any other computer code, files or programmes designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

6.2.3 does not contravene any laws in the United Kingdom in any way;

6.2.4 complies with all present or future codes of practice, regulations and rulings of the Advertising Standards Authority, the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing, the UK Code of Broadcast Advertising and any other codes of advertising standards laid down to ensure that all advertising complies in all respects with all relevant laws and shall be decent, honest and truthful; and

6.2.5 does not constitute a financial promotion within the meaning of the Financial Services and Markets Act 2000 ("Act") or other applicable law, or has been approved by an 'authorised person' within the meaning of the Act or is otherwise permitted under the Act or an exemption order thereto and you have expressly notified us in writing of this.

6.3 The Client will indemnify Agency against any claims, demands, actions, losses, expenses, liabilities, judgments, settlements, damages and costs (including all interest, penalties and legal and other professional costs and expenses) incurred or suffered by Agency and/or Agency Affiliate occasioned by any claim, suit or proceeding resulting from a breach by the Client of the warranties contained in clause 6.2 including but not limited to those instituted by a third party which results from the use by Agency of any Client Content and/or the Client's products authorised for use by the Client and which are alleged to be any of the aforementioned. The Client shall inform Agency without delay if the Client discovers that any Client Content are false or misleading or in any way contrary to law or to any applicable code or advertising regulation.

6.4 You hereby grants to us a non-exclusive, royalty-free licence to use the Client Content to the extent necessary to perform the Services, including performing obligations to third parties in the supply chain, to enhance and optimise your digital media campaigns and report on the Services and provide any required feedback to the third party supply chain, which shall

include the right to sub-licence the same to third parties in connection with the performance of any part of the Services.

6.5 You will promptly supply to us (at no charge) any Client Content reasonably required by us or otherwise necessary to provide the Services and Deliverables and shall ensure that it has all rights and licences in place to enable use by us of all Client Content. If you do not fulfil your obligations under or in connection with this Agreement (including its payment obligations), then to the extent that such failure prevents us from performing any Services and/or providing any Deliverables in accordance with this Agreement, we will be relieved of our obligations to you, and we shall not be liable for any Losses incurred by you as a result of any such failure.

6.6 You acknowledge that all Intellectual Property Rights in Agency Background Materials and Developed Materials are owned by us and remain the property of and vested in us.

6.7 We hereby grant to you a royalty-free, non-exclusive, non-transferable licence for the Contract Period ("**Licence**") to use Agency Background Materials and Developed Materials to the extent necessary to receive or use the Services.

## 7 APPROVALS AND AUTHORITY

7.1 In respect of each Service or Deliverable, where we seek approval within a specific time-scale, if no express approval or rejection is received by us within that timescale the Service or Deliverable will be deemed to have approved. Your approval shall be confirmed by an authorised representative in writing, email or verbally provided that any verbal approval is confirmed by either party in writing. 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 providing any of the Services.

7.2 Where we agree to liaise with your nominated agents or third parties in connection with the Services, you shall be ultimately responsible for the acts or omissions of such agents or third parties and their compliance with requests for information and/or assistance we make in order to fulfil our obligations set out herein.

## 8 DATA PROTECTION

8.1 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 8 shall apply.

8.2 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.

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

8.4 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.

8.5 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.

8.6 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 8.6(b) of this Agreement we shall remain fully liable to you for the Sub-Processor's performance.

8.7 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).

8.8 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.

8.9 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.

8.10 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.

8.11 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 its 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.

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

8.13 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.

8.14 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 we are liable under clause 8.15.

8.15 Subject to clause 5 and clause 8.14, 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.

## 9 CONFIDENTIALITY

9.1 Each party shall hold in strict confidence and not disclose, either directly or indirectly, to any third party any and all Confidential Information of the other party 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.

9.2 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.

9.3 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.

9.4 Obligations of confidentiality set forth in this clause 9 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.

9.5 You shall not, and shall not permit your group companies to, use any plan, proposal, or other document we devise or draw up, 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.

9.6 The provisions of clauses 9.1 to 9.4 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.

9.7 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 our 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 9.

## 10 ANTI-CORRUPTION

10.1 Both parties shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**"); and has and shall maintain in place throughout the term of this Agreement its own policies and procedures, to ensure compliance with the Relevant Requirements.

10.2 Breach of this clause 10 by either party shall be deemed a material breach of this Agreement under clause 13.3.

## 11 MODERN SLAVERY

11.1 We shall, and shall take reasonable steps to procure (where relevant) that all persons who are performing services or providing goods in connection with the performance of this Agreement (collectively, the "**Supply Chain**") shall, at all relevant times:

11.1.1 comply with all applicable laws, regulations, codes, guidance and sanctions relating to anti-slavery and human trafficking in any jurisdiction, including the Modern Slavery Act 2015 (the "**Modern Slavery Requirements**");

11.1.2 not engage in any activity, practice or conduct in any jurisdiction which would constitute an offence under the Modern Slavery Act 2015; and

11.1.3 have and maintain in place throughout the term of this Agreement appropriate procedures, standards or policies with the aim of ensuring compliance with the Modern Slavery Requirements and that slavery and human trafficking is not taking place in its own business or any part of its Supply Chain and shall ensure that such procedures, standards or policies are provided to all relevant staff and enforced in an appropriate manner.

## 12 TERM OF AGREEMENT

12.1 This Agreement shall commence on the Commencement Date and shall remain in force and effect for the entire Contract Period. Save as set forth in clauses 13.2 and 13.3 below, or as

otherwise set forth in the Order, this Agreement may not be terminated by either party during the Contract Period. In addition to any other remedies available to us at law or under this Agreement, if this Agreement terminates during the Contract Period for any reason other than as expressly permitted by the Order you will be liable to pay us the Fee in respect of the remainder of the Contract Period, and you shall not be entitled to a refund of any Fees you have paid prior to termination.

12.2 If a Break Date is set out on an Order, either party may terminate an Order on such date, strictly provided notice is served in accordance with any terms set out on the Order, or if no notice period is specified on the Order, notice must be served in writing no later than 30 days prior to the Break Date. Time is of the essence in respect of the date by which notice must be served, and the length of the notice.

12.3 In addition to any termination rights set forth in the Order, either party may immediately terminate any Agreement by giving written notice to the other party if:

12.3.1 the other party commits any material breach of any of the provisions of this Agreement 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

12.3.2 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.

12.4 Upon termination of this Agreement for whatever reason, you shall pay to us all 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.

12.5 For the purposes of clause 13.3 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.

12.6 We may terminate this Agreement forthwith on providing written notice to you in the event that:

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

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

12.7 The following clauses shall survive termination or expiry of this Agreement: Clause 5 (Liability), Clause 6 (Intellectual Property Rights), Clause 9 (Confidentiality), Clause 14.9 (Notices) and Clause 15 (Governing Law and Jurisdiction).

## 13 FORCE MAJEURE

13.1 In the event that either party is affected by acts, omissions, circumstances or causes beyond its reasonable control ("**Force Majeure**"), including but not limited to Acts of God, flood, earthquake, windstorm or other natural disaster; fire, epidemic or

pandemic, war, embargo, terrorist attack, civil war, nuclear, chemical or biological contamination, compliance with any law or governmental order, rule, regulation or direction, or any action taken by a government or public authority (including but not limited to change of currency or changes to the applicable media and advertising regulations), any labour dispute, including but not limited to strikes (other than in each case by the party seeking to rely on this clause, or companies in the same group as such party) and/or any actions taken by any third parties which are outside the control of the parties, it shall forthwith notify the other party of the nature and extent thereof. Neither party shall be deemed in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations hereunder (including but not limited to commitments made by the Agency to the Client) to the extent that such delay or non-performance is due to any Force Majeure cause of which it has notified the other party and therefore the time for performance shall be extended accordingly. In the event that the Force Majeure continues for a period exceeding two (2) months, this Agreement may be terminated by either party forthwith after prior written notice.

#### **14 GENERAL**

14.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 14.1 shall not affect the validity and enforceability of the rest of this Agreement.

14.2 This Agreement contains the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior understandings relating thereto. Except for any misrepresentation or breach of warranty or representation which constitutes fraud, neither party shall have any remedy in respect of any untrue statement (whether written or oral) made to it on which it relied in entering into this Agreement and neither party shall have any liability other than pursuant to the express terms of this Agreement.

14.3 No amendment, modification or waiver of this Agreement or any term hereof may be effected except by an instrument in writing duly signed and executed on behalf of the parties.

14.4 The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit or affect the scope and intent of this Agreement.

14.5 The relationship between the Client and the Agency is that of independent contractors and not partnership, employment, or joint venture.

14.6 All rights and remedies conferred upon the parties are cumulative and shall not be deemed or construed to be exclusive of any other rights or remedies now or hereafter conferred by law or otherwise and any failure at any time to insist upon or enforce any such right or remedy shall not be construed as a waiver thereof.

14.7 Neither party shall have the right to assign this Agreement or license the rights arising therefrom to any third party, other than its respective Affiliates, without the other Party's prior written consent.

14.8 The Agency shall have the right to subcontract any of the Services to an Agency Affiliate or a third party service provider providing back office services to the Agency without prior notice

to the Client. Save as set out in this clause 14.8, neither party shall have the right to subcontract any of the rights or obligations under this Agreement.

14.9 All notices or requests for approval required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been duly given when sent by e-mail providing that such email is acknowledged or when delivered by regular mail, express mail or courier service as evidenced by written receipt acknowledging delivery. "In writing", "written approval" and "written authorisation" shall, for purposes of this Agreement (unless specifically stated otherwise), include e-mail, service reports to or from Agency or to or from Client and other similar methods of written communication. These written notices and requests for approvals shall be sent to the persons named and addresses specified on the applicable Order.

14.10 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

14.11 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement.

14.12 The failure of either party to enforce or to exercise at any time or for any period any term of or any right pursuant to this Agreement shall not be construed as a waiver of any such term or right and shall in no way affect that party's right later to enforce or exercise it.

14.13 Client hereby represents and agrees to each of the following: (i) it shall not issue any terms and conditions to Agency whether on a purchase order, invoice, or otherwise in respect of or in connection with the Services ("**Client Terms**"), or purport or attempt to incorporate any Client Terms into this Agreement or supersede this Agreement or any provisions thereof with any Client Terms, and (ii) any Client Terms issued by or on behalf of Client 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 this Agreement, and (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 14.13, the provisions of this Agreement shall prevail in the event of a conflict therewith.

14.14 In relation to the Services set out in the Order only, these terms and conditions are supplemental to any Media Services Agreement or other agreement under which the Services as set out in the Order 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 only in relation to the Services set out in the Order.

#### **15 GOVERNING LAW AND JURISDICTION**

15.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

15.2 This Agreement and any non-contractual obligations arising in connection with it has been made under and shall be governed by and constructed in accordance with the laws of England. Any dispute arising under this Agreement, if an amicable solution cannot be found, including any disputes relating to any non-contractual obligations, shall be subject to the exclusive jurisdiction of the English courts.