



DENTSU CREATIVE  
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## **TERMS AND CONDITIONS**

### **General**

These terms and conditions ("**T&Cs**") apply to dentsu creative, a trading division of Dentsu UK Limited, ("**Agency**") providing certain creative and experiential marketing services (the "**Services**") and delivering certain materials and work (the "**Deliverables**") to the Client, whose details are set out in the booking form agreed between the parties ("**Booking Form**") to which these T&Cs relate or are attached.

When the Booking Form is signed by both parties, the T&Cs and the Booking Form together form a binding agreement between the parties for the provision and receipt of the Services and Deliverables (the "**Agreement**"). In the event of conflict between the T&Cs and the Booking Form, the terms of the T&Cs shall prevail.

The T&Cs and the Booking Form shall prevail over and operate to the exclusion of any other terms and conditions, including but not limited to the Client's terms of purchase, any terms or conditions contained in or referred to in any quotation, purchase order, invitation to tender, request for proposal, request for information, acceptance, correspondence or elsewhere or implied by law, trade custom, practice or course of dealing that purport to apply to the provision of the Services and Deliverables and any term, statement or representation howsoever conveyed by the Client that purports to act to the contrary shall not apply.

No addition to, or modification of, the Agreement shall be binding on the parties unless made by a written instrument signed by both parties under which the parties unequivocally agree to vary the terms of the Agreement.

### **Agency's role**

1. The Agency is appointed in the Territory (as defined in the Booking Form) to provide the Services and Deliverables for the Client.
2. The Agreement will commence on the date of last signature of the Booking Form and the Agency will provide the Services and Deliverables in accordance with the Key Milestones set out therein. Once the Services have been performed and the Deliverables provided, the Agreement will terminate automatically.
3. The Agency will provide the Services and Deliverables with reasonable skill and care and in accordance with the terms of the Booking Form and these T&Cs.

### **Performance of the Services**

4. The Booking Form shall be agreed by the Client and the Agency and shall detail all Services to be provided and Deliverables to be produced for the Client.
5. The Client will give the Agency clear briefings and ensure that all information provided to the Agency about its products and services (whether recorded in the Booking Form or otherwise) is complete and accurate.
6. In respect of each Service or Deliverable, where the Agency seeks approval or acceptance within a specific time-scale, if no

express approval, acceptance or rejection is received by the Agency within that timescale, then the Service or Deliverable will be deemed to have been approved or accepted.

7. The Agency will advise the Client of any changes in the estimated cost of Services or Deliverables or any changes in plans, schedules or work in progress previously approved in writing by the Client.

8. The Client may request the Agency to cancel or amend any Services, Deliverables or any plans, Booking Forms, schedules or work in progress. The Agency will take all reasonable steps to comply with any such request provided that the Agency is able to do so within its contractual obligations to third parties, which may limit any rights of amendment or cancellation.

9. In the event of any such cancellation or amendment the Client will reimburse the Agency for any charges or expenses incurred by the Agency to which the Agency is committed. The Client shall also pay the Agency's remuneration covering the cancelled or amended Deliverables or Services as well as any charges imposed on the Agency by third parties arising from the cancellation or amendment.

10. Unless otherwise stated in the Booking Form, the Client shall be responsible for procuring all authorisations, permissions and consents (other than in relation to intellectual property rights for Agency Materials and Commissioned Materials) to enable the Agency to perform the Services and provide the Deliverables.

11. Nothing herein shall require the Agency to act unlawfully, immorally or in such a manner as might: (i) cause damage to its or any third party's goodwill or reputation; or (ii) create a material risk of physical or mental injury to any person.

### **Fees**

12. In consideration of providing the Services and Deliverables, the Client shall pay the Agency Fees, Expenses and Production Costs (collectively, the "**Charges**"). Unless otherwise agreed between the parties in the Booking Form or in writing, the Client shall pay fifty per cent (50%) of the Charges on signature of the Booking Form and fifty per cent (50%) of the Charges on completion of the Services or provision of the final Deliverable (whichever is the earlier). The Client will bear all taxes, foreign exchange costs and levies and charges, statutory or otherwise, including but not limited to VAT, advertising taxes and levies related to the Services which may be in force from time to time. If the Client is required by any applicable laws to make any deduction or withholding from any payment due to the Agency under this Agreement, then the gross amount payable will be increased so that after any such deduction or withholding, the net amount received by the Agency will not be less than what would have been received had no such deduction or withholding been required. Whenever applicable such taxes shall be shown on invoices of the Agency. The Client agrees to waive all rights of set-off or retention.

13. The Client shall pay the Agency's invoices within 30 days of the date of the invoice.



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14. The Client acknowledges and agrees that the Agency may incur some or all of its costs (both internal and external) in a currency other than the Invoicing Currency set out in the Booking Form ("Original Currency") and does not accept liability for risk posed by fluctuations in currency exchange rates and therefore such risk shall be borne by the Client. The parties agree that: (a) any such Charges shall be converted from the Original Currency to the Invoicing Currency according to the prevailing rate of exchange between those currencies on the date of invoice, or, where the invoiced item relates to an item of expenditure by the Agency, the date on which such expenditure was incurred; (b) the amount of the Charges payable pursuant to any invoice when converted to the Invoicing Currency may be greater than the amount of the Charges quoted or agreed in this Agreement due to fluctuations in currency exchange rates and the Client agrees to pay the difference between these respective amounts to the Agency in accordance with the terms of the Agreement; and (c) if the amount of the Charges payable when converted from the Invoicing Currency to the Original Currency reduces between the date of invoice and the date on which the Client actually pays the amounts due under the invoice due to fluctuation in currency exchange rates, then the Agency may invoice the Client for the difference and the Client agrees to pay the difference to the Agency in accordance with the terms of the Agreement. For the purposes of this clause 14, 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 Bloomberg ([www.bloomberg.com](http://www.bloomberg.com)).

15. All sums paid late shall be subject to interest at the rate of 4% above the base lending rate of the National Westminster Bank Plc. from time to time from the date payment fell due until payment is made to the Agency. Without prejudice to the foregoing or the Agency's other remedies under this Agreement or in law, in the event of the Client's failure or delay in making payment of sums due under this Agreement, the Agency shall be entitled to immediately suspend the delivery of Services or Deliverables and shall be entitled to resume delivery only upon full payment of outstanding sums and/or upon amended payment terms.

16. Where a surcharge is levied by a supplier against the Agency due to late payment and this results from late payment by the Client, the Client shall immediately reimburse to the Agency the amount of such surcharge, together with any accrued interest charged by the supplier in respect of the overdue amount.

#### **Intellectual Property**

17. For the purposes of these T&Cs, the terms "Agency Material", "Commissioned Material", "Background Material", "Client Material" and "Performers' Property Rights" shall have the meanings ascribed to them below:

Agency Material: means all artwork, copy, models, designs, photographs, code, software, films, sound recordings and all other material protected by intellectual property rights created by the Agency specifically upon the request of the Client during the Term and forming all or part of the Deliverables specifically set forth in a Booking Form, but for the avoidance of doubt excluding the Background Material and the Commissioned Material;

Commissioned Material: means all artwork, copy, models, designs, photographs, code, software, films, sound recordings and all other material protected by intellectual property rights, the creation of which is licensed, hired, commissioned or otherwise procured by

the Agency from third parties on behalf of the Client during the Term and forming all or part of the Deliverables;

Client Material: means all artwork, copy, data, models, designs, photographs, code, software, films, sound recordings and all other material protected by intellectual property rights, owned or provided by the Client;

Background Material: means any artwork, copy, models, designs, photographs, code, software, films, sound recordings and all other material protected by intellectual property rights, owned by or licensed to the Agency or a third party and not created or commissioned specifically for the Client under this Agreement as specifically set forth in the Booking Form or in existence prior to the commencement of this Agreement; and

Performers' Property Rights: means all rights of performers as they may apply anywhere in the world.

18. Upon expiry or termination of the Agreement, but subject to the Client having complied with all of its obligations under the Agreement and only to the extent that the parties have expressly agreed in the Booking Form that the Client will receive ownership of certain specific intellectual property Deliverables, the Agency shall assign to the Client with full title guarantee all intellectual property rights in the Agency Material. Notwithstanding the foregoing, Performers' Property Rights in Agency Material, if any, shall be assigned by the Agency to the Client, subject to the relevant terms (including but not limited to any repeat fees) agreed with the Client and any legally unwaivable right such as the right to equitable remuneration.

19. Until assignment of the Agency Material is effected in accordance with clause 18, the Agency shall grant to the Client a royalty free, exclusive licence to use the Agency Materials in the Territory in order to make use of the Deliverables for the purpose of this Agreement during the Term.

20. The Agency shall use reasonable endeavours to obtain all usage rights in Commissioned Material as agreed by the parties at the time such material is commissioned as are reasonably necessary to allow the Client to make use of the Deliverables in the Territory during the Term for the purpose of this Agreement and the Client agrees to comply with such terms including without limitation any restrictions on use therein.

21. If the Agency intends to incorporate any Background Material in the Deliverables, it shall grant to the Client such usage rights as are reasonably necessary to allow the Client to make use of the Deliverables in the Territory during the Term for the purpose of this Agreement and the Client agrees to use the Background Material only as permitted by such usage rights.

22. The Client shall be entitled to use the Deliverables after the end of any agreed campaign period, subject to clauses 18, 19 and 21, and subject to complying with the terms of all licences granted by the Agency in respect of Commissioned Material and Background Material, including payment of any additional licence fees.

23. The Client grants to the Agency a non-exclusive, royalty free, worldwide licence to use the Client Materials strictly as necessary



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to perform the Services and provide the Deliverables under this Agreement.

24. Notwithstanding any of the above the Agency shall be able during and after the Term to use the Deliverables (after first publication, broadcast or transmission on behalf of the Client) for the purpose of promoting its own business by means including but not limited to a showreel of the Agency's work, on the Agency's own web site and for purposes associated with the entry and conduct of advertising industry awards schemes.

25. The Agency shall retain all know how obtained in connection with the Services and nothing in this Agreement shall prevent Agency from using any know how, methodologies, ideas or concepts acquired before or during the performance of the Services for any purpose, subject always to Agency's obligations of confidentiality to Client under clause 32.

#### **Warranties and Indemnities**

26. If there is an error with the Deliverables following delivery or delivery of the Deliverables is delayed or does not occur as planned, the Agency will not be liable to the extent that such Deliverables have been approved by the Client or any delay is approved by the Client and, where rejected or delayed, only where caused by the Agency's default or neglect.

27. The Client warrants that all information supplied to the Agency in relation to the Client's products and services before and during the Term will be accurate and such information and any Client Materials do not infringe any copyright, performing rights, trade mark or other intellectual or proprietary right of any third party in the Territory, are not in any way contrary to any law, code or regulation applicable in any part of the Territory (as defined in the Booking Form), do not infringe any other right (including privacy rights) of a third party and shall not be misleading, indecent or defamatory. With regard to any website created or maintained by the Client in relation to the Services, the Client warrants that such website includes a privacy policy and data collection policy which complies with applicable privacy and Data Protection Legislation (as defined in clause 33). The Client hereby indemnifies and will keep the Agency indemnified against all losses, claims, damages and costs arising from any claim by a third party caused by the Client's breach of this clause 27.

28. The Agency warrants that to the best of its knowledge and belief any Agency Materials produced by the Agency as part of the Services will be original to its authors, will not infringe the copyright of any third party in the Territory and will not contain anything obscene, blasphemous, libellous or otherwise unlawful in the Territory other than as contained in any legal or other advice provided to the Agency and communicated to the Client. The Agency hereby indemnifies and will keep the Client indemnified against all loss, claims, damages and costs arising from any claim by a third party caused by the Agency's breach of this clause 28. Without prejudice to the Agency's rights under clause 11, where the Agency notifies the Client that there is a legal risk in providing the Services or Deliverables and the Client instructs the Agency to proceed with performance or delivery, the Client will indemnify and keep indemnified the Agency against all loss, claims, damages and costs sustained by the Agency arising from any claim by a third party connected to the provision of the Services to the Client or its receipt of the Deliverables.

#### **Termination**

29. Each party may terminate the Agreement by written notice to the other (i) if the other party breaches any material provision of the Agreement and does not remedy that breach within 28 days of being required to do so in writing (where such breach is capable of remedy); or (ii) if the other party has a receiver, administrative receiver, administrator, liquidator or provisional liquidator (or their respective equivalents in any jurisdiction) appointed over all or any part of its assets.

#### **Limitation of Liability**

30. Other than as prevented by law, the Agency's liability to the Client under or in connection with the Agreement, tort or otherwise shall be limited to 125% of the aggregate Agency Fees paid under the Agreement to the Agency by the Client.

31. In no event shall the Agency be liable to the Client for any loss of actual or anticipated income or profits, loss of business, reputational loss or depletion of goodwill, pure economic loss, loss of data or information, loss of opportunity, loss of contracts or for any special, indirect, or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

#### **Confidentiality**

32. Both parties will keep any business ideas, market opinions, information and/or material disclosed in connection with the Agreement, including the terms of the Agreement itself, confidential. Unless otherwise agreed in writing, no intellectual property rights or licences are implied or granted in respect of the same. Notwithstanding the foregoing, the Agency may disclose the Client's Confidential Information to its own officers, employees, agents, suppliers, affiliates or sub-contractors to the extent necessary for the purposes of this Agreement.

#### **Data Protection**

33.1 For the purposes of these T&Cs, the following definitions shall apply:

"**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.

"**Client Personal Data**" means personal data provided or made available to the Agency, or collected or created for Client, in connection with the Agreement.

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

"**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,



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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.

**"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.

**"Processing Instructions"** has the meaning set out in clause 32.3.

**"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 the Agency or a Sub-Processor.

**"Sub-Processor"** means another processor engaged by the Agency for carrying out processing activities in respect of Client Personal Data on behalf of Client.

**"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).

33.2 In respect of all processing of Client Personal Data carried out pursuant to this Agreement the parties agree that the Agency is the processor and that Client is the controller. The parties shall comply with and process all Client Personal Data in accordance with applicable Data Protection Legislation.

33.3 The Agency shall: (a) unless Applicable Law requires otherwise, only process Client Personal Data on and in accordance with Client's documented instructions as set out in the Booking Form or otherwise in writing ("Processing Instructions"); (b) unless prohibited by Applicable Law, notify Client if Applicable Law requires it to process Client Personal Data other than in accordance with Processing Instructions (such notification to be given before such processing commences); and (c) notify Client if, in its opinion, the processing of Client Personal Data in accordance with Processing Instructions infringes Data Protection Legislation.

33.4 The Agency shall not permit any Sub-Processor to process Client Personal Data without Client's prior written approval (not to be unreasonably withheld, conditioned or delayed) (approval being already granted in relation to those Sub-Processors set out in the Order Form), and 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 the Agency is bound by this Agreement. The Agency agrees that if a Sub-Processor fails to fulfil its obligations the Agency shall remain fully liable to Client for the Sub-Processor's performance.

33.5 After the business purposes for which Client Personal Data was processed have been fulfilled (or earlier upon Client's written request) the Agency shall, at Client's 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).

33.6 If the Services are altered during the term of the Agreement and the altered Services involve new or amended processing of Client Personal Data, the parties will ensure that the Processing

Instructions are updated as appropriate before such processing commences.

33.7 Client warrants and represents that: (a) the processing of Client Personal Data by Client will be carried out in accordance with Data Protection Legislation; (b) the Agency is entitled to process Client Personal Data pursuant to the Agreement for the purpose of providing the Services and such use will comply with Data Protection Legislation; (c) all Client Personal Data provided by Client to the Agency 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) the Agency's processing operations are suitable for the purposes for which Client proposes to use the Services and engage the Agency to process Client Personal Data; and (ii) the Agency has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Legislation.

33.8 The Agency shall: (i) implement and maintain throughout the term of the Agreement appropriate technical and organisational measures intended to protect Client Personal Data against accidental, unauthorised or unlawful access, disclosure, alteration, loss, damage or destruction; and (ii) take reasonable steps to ensure that its personnel do not process Client Personal Data other than in accordance with Processing Instructions (unless required to do so by Applicable Law) and are obligated to maintain the security and confidentiality of any Client Personal Data to which they have access.

33.9 The Agency shall, without undue delay, notify Client if: (a) it becomes aware of a Security Incident; or (b) it receives 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.

33.10 The Agency shall (at Client's expense) provide such further information and assistance as Client reasonably requires in handling and responding to such notifications in accordance with its obligations under Data Protection Legislation.

33.11 Subject to reasonable written advance notice from Client the Agency shall: (a) permit Client to conduct (and shall contribute to) audits and inspections of its systems and processes in relation to the processing of Client Personal Data subject to Client ensuring: (i) that such audit or inspection is undertaken during normal business hours and with minimal disruption to the Agency's business and the business of other clients of the Agency; (ii) that all information obtained or generated by Client or its 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); and (iii) the auditor signs an NDA approved in advance by the Agency; (b) give Client such information as is reasonably necessary to verify that the Agency is in compliance with its obligations under Data Protection Legislation; and (c) co-operate and assist Client with any data protection impact assessments and consultations with any regulatory authority that Client reasonably considers are relevant pursuant to Data Protection Legislation in relation to Client Personal Data. The cost of such audit, inspection, provision of information or data protection impact assessment shall be borne by Client. Client may require the Agency to conduct an audit or inspection of the Sub-Processor's systems and processes in



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

33.12 Client shall indemnify and keep indemnified the Agency in respect of all DP Losses suffered or incurred by, awarded against or agreed to be paid by, the Agency and any Sub-Processor arising from or in connection with any: (a) non-compliance by Client with Data Protection Legislation; (b) processing carried out by the Agency or any Sub-Processor pursuant to any Processing Instruction that infringes Data Protection Legislation; or (c) breach by Client of any of its obligations under this Agreement, except to the extent that the Agency is liable under clause 33.13.

33.13 Subject to clauses 30 and 31, the Agency shall indemnify Client 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 Agency's 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 Client.

#### **Assignment**

34. Neither party shall assign, transfer, charge or deal in any other manner with the Agreement or any of its rights under it without the prior written consent of the other party, such consent not to be unreasonably conditioned, withheld or delayed.

#### **Force Majeure**

35. "**Force Majeure Event**" means an event beyond the reasonable control of a party (the "**Affected Party**") which is not attributable to its fault or negligence, including acts of God, epidemic or pandemic, expropriation or confiscation of facilities, any form of government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, strikes and other industrial action, sabotage or riots, and floods, fires, explosions or other catastrophes, and any other event which is not attributable to the fault or negligence, but is beyond the reasonable control, of either party.

36. Provided it has complied with clause 36 if the Affected Party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event, the Affected Party shall not be in breach of the Agreement or otherwise liable for any such failure, hinderance or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

37. The Affected Party shall:

- (i) take reasonable steps to overcome and mitigate the effects of the Force Majeure Event as soon as reasonably practicable; and
- (ii) on becoming aware of the Force Majeure Event, inform the other party (the "**Unaffected Party**") in writing that something has happened which is a Force Majeure Event, giving details of the Force Majeure Event.

38. If the Force Majeure Event prevents, hinders or delays the Affected Party from complying with its obligations under the Agreement and it continues for more than 30 days, either party may terminate the Agreement with immediate effect by giving written notice.

#### **Governing law and Jurisdiction**

39. Subject to clause 40 and the provisions of the Booking Form, the Agreement is governed by and construed in accordance with laws of England and Wales and both parties also submit to the non-exclusive jurisdiction of the English courts as regards any claim or matter arising.

40. Notwithstanding the provisions of clause 39, the Agency shall be entitled to enforce its rights under this Agreement subject to the laws, and in the courts of, the jurisdiction in which the Services and Deliverables are delivered.