



DENTSU CREATIVE  
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## TERMS AND CONDITIONS

### 1. DEFINITIONS

For the purposes of this Contract the capitalised terms shall have the meanings set forth below:

**"Acceptance"** means acceptance or deemed acceptance of these Terms in accordance with clause 3.2;

**"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 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 department, authority or agency having jurisdiction in respect of that matter;

**"Agency"** shall mean the party receiving the Work from the Supplier under this Contract and whose details are set out in the Supplier Order Form;

**"Agency Data"** shall mean any data and/or information relating to Agency or its Clients provided directly or indirectly to the Supplier or its employees or created by or generated by the Client's or by Agency's use of the Work;

**"Agency Representative"** shall mean Agency's representative, the contact details for whom are specified in the Supplier Order Form;

**"Anti-Corruption Laws"** shall mean all local and international laws and regulations concerning fraud, bribery and corruption, including but not limited to the UK Bribery Act of 2010 and the United States Foreign Corrupt Practices Act 1977;

**"Associated Persons"** shall mean all employees, agents, consultants, partners, representatives, subcontractors, other individuals and entities acting for or on behalf of Supplier; **"Client"** shall mean Agency's client (if any) as identified in the Supplier Order Form, together with any associated companies; **"Complaint"** means a complaint relating to either party's obligations under Data Protection Legislation relevant to this Schedule, including any compensation claim from a data subject and any notice, investigation or other action from a regulatory authority;

**"Contract"** means this binding agreement between the Supplier and Agency formed of the Supplier Order Form and these Terms;

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

**"Deliverables"** means the goods, materials or other deliverables provided by the Supplier, as specified in the Supplier Order Form;

**"Delivery Date(s)"** means the date or dates upon which the Work shall be provided or performed by the Supplier, as set out in the Supplier Order Form;

**"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;

**"Further Sub-Processor"** means another processor engaged by the Supplier for carrying out processing activities in respect of the Personal Data on behalf of the Agency and authorized by the Agency in accordance with Clause 18(h); **"Intellectual Property Rights"** shall mean all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software and source code, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets), performers'

property rights and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**"Personal Data"**, **"controller"**, **"data subject"**, **"processing"** and **"processor"** shall have the meanings set out in the GDPR (and related terms such as **"process"** shall have corresponding meanings);

**"Processing Instructions"** has the meaning set out in Clause 18(a);

**"Request"** means a request from or on behalf of a data subject of Personal Data to exercise any rights of data subjects under Data Protection Legislation;

**"Security Incident"** means an incident which resulted in (or which if successful would have resulted in) the accidental or unlawful destruction, loss, alteration or unauthorized disclosure of, or access to, Personal Data whilst in the custody or control of the Supplier or a Further Sub-Processor;

**"Services"** means the services provided by the Supplier as specified in the Supplier Order Form;

**"Supplier"** shall mean the party supplying the Work to the Agency under this Contract and whose details are set out in the Supplier Order Form;

**"Supplier Order Form"** shall mean the document containing particulars of the Work and Agency's written instruction to supply the Work in accordance with these Terms;

**"Supplier Representative"** shall mean the Supplier's representative, the contact details for whom are specified in the Supplier Order Form;

**"Terms"** means these Supplier Terms and Conditions; and **"Work"** shall mean the Services and/or the Deliverables to be supplied as described in the Supplier Order Form.

### 2. APPLICATION OF SUPPLIER TERMS AND CONDITIONS

**2.1** Subject to clause 2.2, these Terms, together with the Supplier Order Form to which they relate, shall upon Acceptance form the Contract between Agency and the Supplier for the provision of the Works set out in the Supplier Order Form and such Contract will prevail over any terms or conditions contained in or referred to in the Supplier's quotation, acceptance, correspondence or elsewhere or implied by law, trade custom, practice or course of dealing.

**2.2** This Contract represents the entire agreement between the parties and supersedes all previous contracts, representations or arrangements of any kind between the parties relating to its subject matter. No addition to or modification of these terms shall be binding on the parties unless made by a written instrument which the parties mutually agree in writing.

### 3. EFFECT OF SUPPLIER ORDER FORM

**3.1** The parties shall describe the Work required to be delivered in the Supplier Order Form. Once the Supplier Order Form contains the required information to the satisfaction of the Agency, the Supplier shall sign and deliver the completed Supplier Order Form to the Agency.

**3.2** The Supplier Order Form, once completed, signed by the Supplier and delivered to the Agency, constitutes an offer by Supplier to perform the Work subject to these Terms. Agency shall only be deemed to have accepted Supplier's offer if an authorised representative of Agency has signed the completed and signed Supplier Order Form from Supplier. Accordingly, any acceptance of the Supplier Order Form by Agency shall establish a contract between the parties for the sale and purchase of the Work on the Terms.

### 4. COMMENCEMENT AND DURATION

The Terms will apply from Acceptance and, subject to early termination in accordance with the Terms or unless stated otherwise herein, the Contract shall continue until the Services have been performed and/or Deliverables delivered in accordance with its terms, or until such other time as agreed by the parties in the Supplier Order Form.



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## 5. DELIVERY, PERFORMANCE AND ACCEPTANCE

**5.1** Supplier agrees to deliver the Work to Agency upon the Delivery Date(s) and according to any specifications and/or conditions of performance specified in the Supplier Order Form. Unless Agency has agreed otherwise in writing, Supplier shall deliver the exact specified Deliverables and Services as specified in the Supplier Order Form.

**5.2** Supplier shall meet, and time is of the essence in relation to, any performance timescales and/or Delivery Dates specified in the Supplier Order Form.

**5.3** If Supplier fails to deliver the Work as required by clause 5.1 or to meet any performance timescales and/or Delivery Dates as required by clause 5.2, Agency may, without prejudice to any other rights or remedies afforded to it under this Contract or by applicable law: (a) terminate the contract between the parties in whole or in part; (b) refuse to accept any subsequent performance of the Work; (c) purchase substitute services from elsewhere; and/or (d) hold Supplier responsible for any loss and additional costs incurred as a result of such failure.

**5.4** Supplier agrees to cooperate fully with any third parties appointed by Agency or otherwise at the request of Agency as necessary to complete performance of the Work and as reasonably required by the Agency thereafter.

**5.5** Supplier agrees to notify Agency immediately on becoming aware of any event or circumstance that has caused or may cause a delay in the commencement or completion of the Work. Without prejudice to Agency's other remedies under the Terms or in law, Supplier shall be solely responsible for promptly remedying, at Supplier's own expense and to the satisfaction of Agency, any non-conforming part of the Work.

**5.6** Where applicable, the Supplier shall include with each delivery a list of contents including serial numbers, to allow for review of contents upon receipt.

**5.7** Agency reserves the right to inspect the Work on or immediately after delivery and within a reasonable time after delivery to reject the Work or any part of the Work which is not provided in accordance with the Contract, including without limitation (i) failure to conform with specifications relating to quantity, quality and description set out within the particulars of the Supplier Order Form; or (ii) compliance with any conditions of performance (if any) specified in the Supplier Order Form.

**5.8** Supplier will fully comply with all policies, rules, procedures and standards notified by Agency in writing to Supplier from time to time in relation to the Work including, without limitation, those governing quality, conduct and appearance of project personnel, site and product safety, insurance, data privacy and data security, business continuity and disaster recovery.

## 6. QUALITY OF THE WORK

**6.1** Supplier hereby represents and warrants that: (a) it will perform the Work in accordance with best industry practice and standards and, in any event, to the satisfaction of Agency; (b) the Work will conform with all descriptions and specifications set out in the Contract; (c) it will ensure that it, and any sub-contractors performing any portion of or the entirety of the Work, shall be suitably qualified with appropriate levels of training, experience and seniority to carry out the Work and, where applicable, shall be duly licensed to carry out the Work as required by law; (d) the Work will be provided in accordance with all applicable legislation from time to time in force, and Supplier will inform Agency as soon as it become aware of any changes in such legislation; (e) neither Supplier nor any of its Associated Persons has at any time engaged in, or presently engages in, any activity, practice or conduct which may constitute an offence under any applicable fraud, anti-bribery or corruption laws or regulations, including but not limited to the Anti-Corruption Laws; and (f) Supplier will provide a safe and healthy working environment for its staff and will comply with all applicable laws, rules and regulations. Supplier shall be responsible for complying with and for procuring that its servants, agents, suppliers and subcontractors comply with such obligations and will indemnify Agency against all costs, expenses and liabilities caused by any failure to do so. The provisions of this clause 6 shall survive any performance, acceptance or payment and shall extend to any

substituted or remedial services provided by Supplier.

## 7. PAYMENT

In consideration of the provision of the Work, Agency agrees to pay to Supplier the sum(s) specified in the Supplier Order Form. Invoices shall be issued by Supplier no earlier than the Delivery Date(s). In the event that an invoice is issued earlier than the Delivery Date(s) then it shall not be deemed to have been received by Agency until the Delivery Date. Payment will be made forty five (45) days after receipt of Supplier's invoice, subject to the following: (a) a Supplier Order Form has been validly agreed in accordance with clause 3; (b) the Supplier has fully complied with its obligations under this Contract; and (c) the Supplier has clearly quoted the Agency's purchase order number on the invoice and any accompanying advice notes and the packaging. The price specified in the Supplier Order Form shall be exclusive of all sales taxes (including but not limited to VAT (which shall be added to Supplier's invoices by Supplier at a rate ruling at time of delivery of the Work), duty, foreign sales tax and delivery). Notwithstanding the fact that withholding or other similar taxes properly payable by it ("Withholding") are the Supplier's responsibility, the Agency will, where it deems it appropriate, deduct such sums from the amount due to the Supplier and pay such Withholding to the relevant tax authority. The Supplier's invoice must: (i) be a valid tax invoice for the purposes of VAT legislation (or such equivalent legislation that may apply), (ii) identify the Work to which the invoice relates and where a multi-item invoice itemise individual items as stated in the Supplier Order Form, (iii) be sent to Agency's company address as set out above or otherwise notified to Supplier or sent to Agency via mail, email or facsimile as provided in clause 19.4 of this Contract; and (iv) must express all amounts due in the Invoicing Currency as stated in the Supplier Order Form. In the event that the amount invoiced, when converted from the Invoicing Currency to the Agency's domestic currency increases between the date of the Contract and the date of the invoice due to currency exchange rate fluctuations, the Agency shall only be obliged to pay the lesser sum. In the event of the Supplier's non-compliance with the terms of this clause 7, Agency shall be entitled to withhold all or part of payment until such time as Supplier complies. Further, Agency reserves the right to withhold payment of any disputed part of an invoice until the dispute is resolved, but will notify Supplier of any dispute within a reasonable period of time and will not delay or withhold payment of any part of the invoice that is not disputed.

## 8. INTELLECTUAL PROPERTY RIGHTS

**8.1 Client IPR:** Subject to clauses 8.2 and 8.3, Supplier hereby assigns to Agency full and unrestricted ownership, with full title guarantee and free from all third party rights, the Intellectual Property Rights in the Work. Supplier shall, at the request of Agency, promptly do (or procure to be done) all such further acts and things and the execution of all such other documents as Agency may from time to time require for the purpose of securing the full benefit of all right, title and ownership in and to the Intellectual Property Rights and all other rights assigned to it (or the Client if Agency so directs) in accordance with this paragraph.

**8.2 Background IPR:** The Supplier or its licensors shall retain intellectual property rights in all materials (i) utilised in the Work whose existence predates this Contract; or (ii) which were created after the commencement of this Contract, were not part of the Deliverables and which the Supplier can demonstrate were developed independently from the Work, or (iii) identified as such in the Supplier Order Form, but shall grant to Agency a royalty-free, transferable licence to use those materials as part of the Work on a perpetual, worldwide, non-exclusive basis.

**8.3 Third Party IPR:** the Supplier shall not utilise any third party intellectual property rights within the Work without the prior written consent of the Agency and then only upon such terms of use as agreed with the Agency in writing.

**8.4 Moral rights: Supplier hereby absolutely and unconditionally waives all moral rights in the Work in favour of Agency (or the Client if Agency so directs) and any respective licensees, assignees and successors in title. Supplier undertakes to procure moral rights waivers in the same terms signed by all individuals and other persons who may have any moral rights in the Work.**



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**8.5 Ownership of material: The Agency Data and the Work, (including without limitation all documents, drawings, designs, negatives, transparencies and prints and all disks, tapes and other material on which the Agency Data or Work is stored), shall be property of Agency. Supplier's possession of any Agency Data, property, content or materials belonging to Agency or the Client for purposes of developing the Work does not have the effect of assigning any rights or ownership over any of them to Supplier, and Supplier must not use any of them for any purpose other than the provision of the Work to Agency. Upon completion of the Work, Supplier shall undertake to promptly return to Agency, without keeping any paper or digital copies, any material, data, content or materials belonging to Agency or the Client.**

**8.6 Promotional Exemption:** Supplier may not reproduce the Work or use the Work for its own publicity purposes or use the Work in relation to any of its other customers or clients without prior written consent of Agency, which Agency may grant or withhold at its discretion.

## 9. WARRANTIES AND INDEMNITY

**9.1** Supplier warrants that Agency and the Client will be entitled to use the Work, including any Third Party IPR incorporated therein, to the full extent permitted under this Contract free from claims of any nature including without limitation any intellectual property infringement claims.

**9.2.** Supplier warrants that it will comply with all applicable legislation and recognised industry standards in developing the Work and that it has the necessary skills, qualifications, resources and all necessary consents, including (without limitation) any consents required by law, to fulfil its obligations under this Contract.

**9.3** Supplier shall indemnify Agency on demand and hold it harmless from any and all claims, liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred by Agency or, where appropriate, the Client, as a result of or in connection with: (a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the the Work; (b) any liability arising from Supplier's breach of its warranties under this Contract or other failure to perform its obligations as required by this Contract; or (c) any liability arising as a result of Supplier's acts or omissions (or the acts or omissions of its Associated Persons).

**9.4.** The provisions of this clause 9 shall survive termination of this Contract, however arising.

## 10. LIMITATION OF LIABILITY

**10.1** Agency shall not under any circumstances be liable, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, loss of business, depletion of goodwill, pure economic loss, loss of data or information, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract

**10.2** Without prejudice to clause 10.1, Agency's total aggregate liability to the Supplier in respect of all losses suffered by the Supplier from, under or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, breach of statutory duty or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to 100% of the total Supplier Fees paid or payable for the Work during the 12 month period prior to the claim arising.

## 11. INSURANCE

Supplier shall hold insurance cover with a reputable insurer to an appropriate value to cover the liability assumed by it under this Contract. On request, Supplier will provide Agency with evidence of such insurance. In the event that Supplier fails to maintain such insurance, Agency shall be entitled to maintain such insurance and shall be entitled to reimbursement by Supplier for all associated premiums and costs.

## 12. CONFIDENTIALITY

Supplier undertakes, for the duration of this Contract and afterwards, to keep strictly confidential all confidential matters disclosed by Agency to Supplier relating to Agency, the Client or the Client's products or services. Confidential matters will normally include (but not be limited to): Supplier's engagement by Agency and the terms thereof, all details of the Work and the purpose of the Work, all details concerning Agency or the Client's business, infrastructure, processes, services and products which are not already in the public domain, including Agency Data, and all details concerning the Client's advertising and marketing plans. Supplier undertakes to ensure that all Associated Persons and other third parties to whom it may be necessary to disclose confidential matters for the purposes of performing its obligations under this Contract undertake to keep such matters strictly confidential. The provisions of this clause 12 shall survive termination of this Contract, however arising.

## 13. TERMINATION

**13.1.** Agency may terminate this Contract for any reason upon thirty (30) days prior written notice, provided that Agency pays the Supplier for all Work undertaken in accordance with the Contract up to the date of such notice.

**13.2.** Without prejudice to any other remedies available to it by operation of applicable regulation or law, Agency may terminate this Contract immediately if: (a) Supplier is in breach of an obligation under this Contract and, if the breach is capable of remedy, fails to remedy said breach within five

(5) days of receipt of a notice from Agency requiring remedy of such breach; (b) Supplier is in breach of its obligations under clause 12 of this Contract; (c) a petition is presented for an administration or winding up or bankruptcy order against Supplier or a receiver, administrative receiver or manager is appointed over any of Supplier's assets or an order is made or a resolution passed for the winding up of Supplier or if Supplier enters into any composition with its creditors or if any of these appear to Agency to be likely to happen; or (d) for any other reason whatsoever it appears to Agency that Supplier may become unable to perform its obligations under this Contract or to perform them in the agreed upon time period.

**13.3** In the event of termination pursuant to clause 13.2 Supplier will be liable for all additional costs incurred by Agency or by the Client in obtaining the Work from an alternative supplier, and all cancellation or other charges incurred and all other losses arising out of its breach of this Contract.

**13.4.** Termination of this Contract, howsoever arising, shall be without prejudice to the rights, remedies and duties of the parties prior to termination.

## 14. ANTI-BRIBERY AND CORRUPTION

**14.1.** Supplier shall ensure that, in relation to this Contract and general business practices, neither it, nor any of its Associated Persons, engage in any activity, practice or conduct which may constitute an offence under any applicable Anti-Corruption Laws. In particular, Supplier shall not, and will ensure that any Associated Persons do not offer, promise or pay to, or solicit or receive from any other person (including public and government officials) or company, any financial or other advantage which causes or is intended to cause another person to improperly perform their function or activities in order to secure or retain a business advantage. Supplier shall further ensure that, unless allowed or required by local law, neither it nor any Associated Persons, offer, promise or pay to any public government official any financial or other advantage in order to secure or retain a business advantage, including payment intended to induce officials to perform duties they are otherwise obligated to perform.

**14.2.** As part of its internal measures to ensure compliance under this clause 14, Supplier shall implement and maintain policies and procedures to assess the risk of, monitor, and prevent the breaching of Anti-Corruption Laws by itself or any of its Associated Persons. Such policies and procedures shall be made available for immediate inspection upon Agency's written demand and failure to implement policies and procedures which are, in Agency's sole discretion, adequate shall be deemed a material breach of this Contract.



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**14.3.** Supplier shall, upon discovery, notify Agency immediately of any breach or suspected breach by any employee or Associated Person of this clause 14 and/or any Anti-Corruption Law.

## 15. AUDIT

The Supplier shall keep detailed, accurate and up to date records and books of accounts showing all payments made and goods/services provided by Supplier in connection with this Contract during the previous six years. Supplier shall ensure that such records and books of accounts are sufficient to enable Agency to verify Supplier's compliance with its obligations under this Contract. Supplier agrees that, upon request by Agency at any time during the term of this Contract and for six years after termination of this Contract, it will make available for audit by Agency and/or its third party representatives, Supplier's books, records and other documentation relevant to its business activities conducted pursuant to this Contract. Should the audit reveal any failure from the Supplier to comply with the provisions of this Contract, the Supplier agrees to pay any and all costs of any such requested audit. In the event any deficiencies are identified, Supplier will take the steps necessary within an acceptable timeframe to correct any deficiency to Agency's satisfaction.

## 16. RISK

**16.1** Supplier shall deliver the Work at its own risk to the premises specified by Agency or such other location as set out in the Supplier Order Form. Where the Work cannot be delivered to a location specified in the Supplier Order Form, Agency may require the Work to remain on premises owned or controlled by the Supplier. Risk in all Work shall remain with the Supplier: (a) at all times in respect of any Work that is not delivered to premises specified in the Supplier Order Form; and

(b) in respect of Work to be delivered to premises specified in the Supplier Order Form, until such time as the Works have been safely delivered to those premises and an agent of Agency has signed a delivery note acknowledging receipt. Delivery of the Work is without prejudice to any right of rejection to which Agency may be entitled under the Contract or otherwise.

**16.2** Where Supplier is responsible for risk in any Work and any such Work becomes damaged, lost or stolen, Supplier shall forthwith notify Agency of the same and, at Agency's absolute discretion and free of charge, either replace such Work or refund any monies paid by Agency in respect of any such Work. Supplier shall also be liable for any direct or indirect losses, damages and/or liabilities arising as a result of any such loss, theft or damage.

## 17. DATA SECURITY

**17.1** Supplier shall not use the Agency Data or materials or property provided by Agency for any purpose other than the Work and will hold, and will ensure that all employees, agents, suppliers and subcontractors will hold, the Agency Data in strict confidence and maintain and monitor a security programme that contains administrative, technical and physical safeguards designed to protect against anticipated threats or hazards to the confidentiality, integrity and security of, the unauthorized or accidental destruction, loss, alteration or use of, and the unauthorized access to the Agency Data, to Agency's standards of security as set out in any security policy provided by Agency to the Supplier from time to time, and no less a standard than ought reasonably be expected from a first class supplier operating best data security practices.

**17.2** Supplier shall use its best efforts to ensure that its information security program includes industry standard password protections, firewalls and anti-virus and malware protections to protect Agency Data stored on computer systems.

**17.3** Supplier shall notify Agency in writing immediately (and in any event within 24 hours) whenever Supplier reasonably believes that there has been any unauthorised access, acquisition, use, disclosure or destruction of the Agency Data ("Security Breach"), and shall provide detailed information regarding the nature and scope of the Security Breach, the actual or potential cause of the breach, and the measures being taken by Supplier to investigate the breach, correct or mitigate the breach, and prevent future

breaches.

## 18. DATA PROTECTION

**18.1** In respect of all processing of Personal Data carried out pursuant to this Contract, the Client is the controller, the Agency is a processor and the Supplier is a sub-processor. As such, the Agency is acting on the instructions of the Client and the Supplier agrees to act on instructions provided by the Agency to enable the Agency to provide services to the Client.

**18.2** Supplier shall only process the Personal Data to the extent necessary to comply with its obligations and provide the Services under this Contract and, unless otherwise required by Applicable Law, in accordance with the Agency's instructions as set out in the Order Form or as otherwise provided by the Agency to the Supplier in writing from time to time ("**Processing Instructions**"). Use of Personal Data for any other purpose is prohibited. Supplier shall not refuse to follow a Processing Instruction and shall contact the Agency as soon as reasonably practicable if unsure of the parameters of any Processing Instruction.

**18.3** If Supplier receives any Complaint or Request it shall immediately notify Agency, provide Agency with full information, co-operation and assistance in relation to any such Complaint or Request and not respond to any Request without the Agency's prior written approval.

**18.4** Supplier shall not (and shall procure that any Further Sub-Processor shall not) process or transfer any Personal Data outside the EEA without Agency's prior written consent and then only upon such terms as Supplier reasonably requires to comply with the Data Protection Legislation and in accordance with the transfer mechanism agreed with the Agency.

**18.5** Supplier shall notify Agency immediately if: (i) it becomes aware of Applicable Law requires it to process the Personal Data other than in accordance with Processing Instructions (such notification to be made before such processing takes place); or (ii) it becomes aware of a Processing Instruction that infringes Data Protection Legislation, following notification of which the Agency may suspend the Processing Instruction and either amend it or terminate that part of the processing by the Supplier, and any elements of the fees and/or charges under the Order Form relating to such Processing Instructions shall be waived by the Supplier and not payable by the Agency.

**18.6** Supplier warrants that, having regard to the state of technological developments and the cost of implementing any measures, it has implemented and will maintain appropriate (being of at least the minimum standard required by Data Protection Legislation and the Agency in writing from time to time and compliant with good industry practice) technical and organisational measures, internal controls and information security routines to ensure the security of the Personal Data, to prevent the accidental, unauthorized or unlawful access, disclosure, alteration, loss, damage or destruction of the Personal Data, and to assist the Agency in ensuring compliance with the requirements for the security of processing as set out in the Data Protection Legislation. Supplier shall keep all Personal Data separate from all other data including any data which relates to other clients of the Agency.

**18.7** If the Supplier becomes aware of, receives a notification regarding, or reasonably suspects a Security Incident it shall (at no cost to the Agency): (i) without undue delay (and in any event no later than twelve (12) hours after becoming aware of, receiving a notification regarding, or first suspecting the Security Incident) notify the Agency of the Security Incident; (ii) without undue delay (and in any event no later than twenty four (24) hours after becoming aware of, receiving a notification regarding, or first suspecting the Security Incident) provide the Agency with detailed information about the nature of the Security Incident including the categories and approximate number of data subjects and Personal Data records concerned, the likely consequences of the Security Incident and the steps the Supplier has taken to address the Security Incident; (iii) take all necessary steps to mitigate the effects and minimize any damage resulting from and to prevent a recurrence of the Security Incident; (iv) provide such assistance and cooperation as the Agency requires in responding to the Security incident including in relation to



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notifying any relevant regulatory authority and/or data subject of the Security Incident.

**18.8** Supplier shall ensure that its personnel (and shall procure that the personnel of any Further Sub-Processor) are reliable and receive adequate training on compliance with Data Protection Legislation; maintain the security and confidentiality of any Personal Data, and do not process Personal Data other than in accordance with the Processing Instructions.

**18.9** Supplier shall not permit another processor to process Personal Data without the prior written approval of the Agency. Those processors who are approved by the Agency as Further Sub-Processors as at the date of the Agreement are set out in the Order Form. Supplier shall: (i) for each Further Sub-Processor keep, and make available to the Agency on request, a written record containing: (1) all information required by the "Permitted Further-Sub-Processors and Transfers" section of the table in the Order Form; and (2) the date of the Agency's written approval and the name and job title of the Agency's approver; (ii) ensure, prior to any processing of Agency Protected Data, that the Further Sub-Processor is contractually bound to substantially similar obligations as those contained in this Clause 18 (including providing such access and assistance as the Agency requires from time to time). The Supplier shall provide copies of documentation to evidence its compliance with this paragraph to the Agency promptly on request; (iii) remain fully liable to the Agency for the Further Sub-Processor's performance, as well as for any acts or omissions of the Further Sub-Processor as regards its processing of Agency Personal Data; and (iv) immediately upon written notice from the Agency cease using a Further Sub-Processor to process Agency Personal Data.

**18.10** Supplier shall maintain a record of all categories of processing carried out on behalf of the Agency and make such records available to the Agency and (provided any correspondence is provided to the Agency in advance) any relevant regulatory authority on request.

**18.11** Supplier shall co-operate and assist the Agency with any privacy impact assessments and consultations with (or notifications to) relevant regulatory authorities, and shall comply with all reasonable requests or directions by the Agency to verify or procure Supplier's full compliance with its obligations under Data Protection Legislation.

**18.12** Subject to reasonable advance written notice from the Agency, Supplier shall (at no cost to the Agency) permit the Agency and/or a qualified representative to conduct audits and inspections of the Supplier's systems and processes in relation to the processing of Personal Data, contribute to such audits and inspections, and allow the Agency to share the results of any such audit or inspection with the Agency's client or a relevant regulatory authority. If any audit or inspection reveals non-compliance by Supplier (or any Further Sub-Processor) with its obligations under Data Protection Legislation or breach of this Clause 18, at Agency's request Supplier shall promptly pay the Agency's (or its qualified representative's) audit or inspection costs and resolve (and shall procure that any Further Sub-Processor resolves) at its own cost and expense all data protection and security issues discovered during the audit caused by such breach or non-compliance.

**18.13** On fulfilment of the business purpose for processing, or earlier upon the Agency's written request, Supplier shall, at the Agency's option, either delete or return all Personal Data and cease processing such Personal Data, and shall delete any existing copies of Personal Data unless storage of such copies is required by Applicable Law (and Supplier shall notify the Agency of that requirement).

**18.14** Supplier 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 or the Agency's client arising from or in connection with: (1) any breach by the Supplier of its obligations under this Clause 18 or Data Protection Legislation; or (2) Supplier (or any person acting on its behalf including a Further Sub-Processor) acting outside or contrary to the Processing Instructions of the Agency in respect of the processing of Personal Data.

## 19. GENERAL

**19.1** Except as agreed by Agency in writing, no element of the performance of this Contract may be sub-contracted by Supplier and Supplier may not assign or otherwise transfer any rights and/or obligations under these terms without Agency's prior written consent.

**19.2** Nothing in this Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purposes. The Supplier shall act as principal in all dealings with third parties connected with performance of its obligations under this Contract. No party shall have authority to act as agent for, or to bind the other party in any way.

**19.3** A waiver of any right under this Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

**19.4** Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**19.5** Subject to clause 19.6 and anything agreed to the contrary in the Supplier Order Form, this Contract shall be governed by and constructed in accordance with the laws of England and Wales and all disputes arising under this Contract shall be subject to the non-exclusive jurisdiction of the English courts.

**19.6** Notwithstanding the provisions of clause 19.5, the Agency shall be entitled to enforce its rights under this Contract subject to the laws, and in the courts of, the jurisdiction in which the Work is delivered.

**19.7** As the Services and Deliverables are being performed at each Location, the Supplier acknowledges that the owners or licensors of those Locations (the "Site Owners") impose certain terms and conditions on the use of the Locations. The Supplier therefore agrees to the following:

1. Where required by Dentsu Creative, the Supplier shall produce the following information within the period of time notified by Dentsu Creative prior to the event: (i) appropriate evidence of insurance which is satisfactory to Dentsu Creative; a suitable and sufficient Health and Safety Risk Assessment; a suitable and sufficient Fire Risk Assessment; and such other documents and information as Dentsu Creative may require.
2. The Supplier agrees that it shall: (a) not use the Location for any purpose other than the purpose set out in this SOW; (b) at all times comply with the terms, conditions, rules, regulations and provisions of any handbooks, policies or other documents and the relevant Locations; (c) if notified, change or move to a new location at the Location that may be notified by Dentsu Creative; (d) shall not leave the Location unattended during the Location opening hours (only to the extent that the Supplier is responsible for attending the Location under this SOW), and shall maintain an attractive display throughout the Location opening hours (only to the extent that the Supplier is responsible for the display at the Location under this SOW); (e) operate only within the designated space at the Location and not solicit members of the public in other parts; (f) not hand out any leaflets or other promotional items without first obtaining Dentsu Creative's approval; (g) display only signs and notices which have been approved by Dentsu Creative; (h) comply with all applicable legislation, regulations and guidelines including without limitation all local authority, fire brigade and Building Control regulations, requirements and recommendations applicable; not without Dentsu Creative's consent display any flashing lights; (i) not play or use any musical instrument or equipment or apparatus which produces sound or video pictures without Dentsu Creative's consent; (j) not make any alterations or additions, nor assemble install dismantle or carry out any works or installation without the consent of Dentsu Creative; (k) not without Dentsu Creative's consent install or use any machinery or apparatus which causes noise or vibration; (l) not assemble install dismantle or carry



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out any works to any equipment during the Location opening hours; (m) not do or permit or suffer any act which causes or may cause a nuisance damage or injury; (n) not cause any damage to nor overload the floor at the Location; (o) pay to Dentsu Creative on demand the cost of repairing any damage to the Location caused by the Supplier under its control; (p) not do anything which may invalidate or prejudice any insurance policy; (q) not unload or load vehicles except in the service yards and in using the service roads and service yards shall comply with all requirements and directions of Dentsu Creative or the Site Owner (including any such requirements and directions contained in any handbooks or policies); (r) bag and place all refuse in the locations so designated by Dentsu Creative or the Site Owner but only at such times as shall be specified by Dentsu Creative or the Site Owner; (s) if required by Dentsu Creative, before occupying the Location, prepare and a risk assessment in such form as Dentsu Creative shall reasonably require; (t) comply with all applicable legal and regulatory requirements, including but not limited to the Consumer Protection from Unfair Trading Regulations 2008; (u) ensure the prevention of illegal migrant working in the UK as governed by section 8 of the Asylum and Immigration Act 1996, which came into force on 27 January 1997, and supply suitable evidence where required; (v) ensure that all staff are aware of and adhere to the Fire Safety Procedures as stipulated by The Regulatory Reform Fire Safety Order 2006; (w) ensure that anyone having direct access to children or vulnerable adults have a valid Disclosure and Barring Service (DBS) check (previously CRB check) (x) if requested by Dentsu Creative provide a current Electrical Inspection Certificate for all electrical apparatus of whatever nature used in relation to the Location in accordance with the IEE Regulations in force; (y) on the licence period ending, immediately remove the Supplier's property from the Location at the Supplier's own expense leaving the Location in good and proper repair, clean and tidy and with all additions and alterations removed and reinstated to the entire satisfaction of Dentsu Creative and the Site Owner. In the event that the Supplier fails to comply with its obligations pursuant to this clause, Dentsu Creative and/or the Site Owner shall be entitled to immediately carry out such works as would have been necessary to comply with such obligations and shall be entitled to recover the cost of doing so from the Supplier. The Supplier shall pay any such costs within 10 Working Days of demand; and (z) indemnify Dentsu Creative against all claims demands proceedings damages costs and expenses arising from any breach of the Supplier's obligations contained in the Licence.

3. In the use of any Wi-Fi service available at the Location, the Supplier shall comply at all times with any terms and conditions as may be required for the use of such Wi-Fi and, in addition, the Supplier agrees that any such use of the service is on an 'as is' and 'as available' basis and at its sole risk, and Dentsu Creative is not liable for any loss suffered as a result of using it or relying on it.

4. The Supplier acknowledges that neither Dentsu Creative nor the Site Owners shall be responsible for any damage to or loss of any goods, property, merchandise or money in the Location and any such damage or loss shall be solely at the Supplier's own risk.

5. The Client acknowledges that the Site Owner has the right to terminate the site licence it has with Dentsu Creative in relation to the Locations with immediate effect at any time (without cause). Site Owners often insist on such clauses, for example, for be able to terminate these licenses in the event of an emergency or out of necessity. In the unlikely event that the Site Owner exercises such a right to terminate, Dentsu Creative may itself terminate this Agreement with immediate effect without cause, and be entitled to a pro rata reduction of the fees, charges or costs payable hereunder, which will be refundable if paid, to reflect work that was not undertaken as a result of such termination.