

DISTRIBUTION LICENCE

STANDARD TERMS AND CONDITIONS

1 INTERPRETATION

1.1 Words and expressions used in this Agreement have the following meanings unless the context otherwise requires:

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| “Advertising Standards” | means all statutory and legal requirements and regulations in force relating to advertisements or promotional messages, including The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (12th edition) and Exterior Media’s guidelines for copy approval, as posted on its website, and in each case as amended from time to time; |
| “Agent” | means any person, firm or body corporate appointed (or which Exterior Media believes to be appointed) by the Principal as agent to administer an Order and in so doing to enter into this Agreement on its behalf; |
| “Agreement” | means a legally binding agreement between the Principal and Exterior Media consisting of the Order, the Booking Confirmation and these Standard Terms and Conditions; |
| “Booking Confirmation” | means the document or written communication headed "Confirmation of Order" sent by Exterior Media to the Principal or to the Agent placing the Order on behalf of the Principal; |
| “Business Day” | means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business; |
| “Charge” | means any fees and any associated costs for the Distribution specified in the Order or otherwise payable pursuant to the terms of this Agreement; |
| “Distribution” | means the distribution of printed publications free to the public or the commercial exhibition, concourse distribution or sampling of any product or service by members of the public, in each case at the Site, on the date(s) and during the Permitted Hours authorised and set out in the Order to this Agreement, as may be varied in accordance with the terms of this Agreement; |
| “Distribution Period” | means the dates and times stated in the Order during which the Distribution will be executed, or such other dates and times as may be agreed between the Parties in writing; |
| “Exterior Media” | means Exterior Media (UK) Limited, a company registered in England and Wales with registered number 02866133 whose registered office is at 7 th Floor, Lacon London, 84 Theobald’s Road, London, WC1X 8NL or its successors in title; |
| “Manager” | means the manager from time to time of a Station; |
| “Operating Company” | the train operating company responsible for operating a Station; |
| “Order” | means an order relating to a Distribution subject to these Standard Terms and Conditions which is sent by or on behalf of the Principal to Exterior Media; |
| “Parties” | means Exterior Media and the Principal and, for the avoidance of doubt, does not include the Promoter where the Promoter is not also the Principal; |
| “Permitted Hours” | means the hours specified in the Order, or such hours as may be agreed between the Parties in writing; |
| “Principal” | means: (a) the person, firm or body corporate, whether or not an advertising agency, who submits an Order; or (b) where an Order is submitted by an Agent who warrants that it is authorised to act as |

- agent on behalf of a principal, the person specified as the principal in such Order;
- “Promoter”** means the person named in the Order as the Promoter, provided that:
- (a) for the purposes of interpreting the Principal’s obligations under clause 6, “Promoter” shall include such person’s sub-contractors, and each of their employees, officers and agents responsible for the administration of the Distribution; and
 - (b) for the purposes of interpreting Exterion Media’s obligations under this Agreement, to the extent that personal accreditation or authorisation is required by the Operating Company to administer Distributions, “Promoter” shall be construed narrowly as comprising only such persons as have been so accredited or authorised;
- “Site”** means the site(s) at the Station(s) specified in the Order, any replacement site(s) that may be specified pursuant to clause 3.4 or such other site as may be agreed between the Parties in writing;
- “Site Specific Instructions”** means any instructions provided to the Principal or the Promoter by or on behalf of Exterion Media or the Operating Company;
- “Standard Terms and Conditions”** means these terms and conditions; and
- “Station”** means each passenger railway station specified in the Order.
- 1.2 In this Agreement, unless the context otherwise requires, a “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns.
 - 1.3 The Schedule(s) and the information set out in the Order and Booking Confirmation form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. A reference to a schedule shall mean the Schedule to this Agreement.
 - 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
 - 1.5 Any words following the terms “including”, “include”, “in particular” 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.
 - 1.6 The headings will be disregarded in construing this Agreement.
 - 1.7 To the extent that the Principal and the Promoter are the same person, each obligation of the Principal to procure that the Promoter shall or shall not do something shall be interpreted as an obligation of the Principal (in its capacity as Promoter) to do or not do that thing.
 - 1.8 To the extent that the Principal is involved in the running of the Distribution or is present at the Site or Station or the Operating Company’s premises in connection with this Agreement, each obligation of the Principal to procure that the Promoter shall or shall not do something shall be interpreted as an obligation of the Principal to do or not do that thing.
 - 1.9 If there is any conflict, apparent conflict or ambiguity in or between any of the sections of this Agreement set out below, the sections shall be applied in the following order of precedence with the sections higher in the order of precedence prevailing over the Parties:
 - 1.9.1 the Order; then
 - 1.9.2 the Booking Confirmation; then
 - 1.9.3 these Standard Terms and Conditions; then
 - 1.9.4 the Schedule; then
 - 1.9.5 any other document referred to in this Agreement.

2 **FORMATION OF CONTRACT**

- 2.1 Subject to clause 2.2, each Order shall be signed by the Principal and incorporate these Standard Terms and Conditions. The Parties agree that an email sent from or on behalf of the Principal to Exterion Media will constitute a validly signed Order for the purposes of this Agreement. To the extent that any Order is sent to Exterion Media without specifying the identity of the Principal, the person, firm or company sending the Order shall be the Principal.
- 2.2 The Parties agree that an Agent may sign and/or submit an Order where the Agent identifies, or has identified, the Principal under such Order. As a separate agreement between the Agent and Exterion Media, and in consideration of Exterion Media issuing a Booking Confirmation in respect of the relevant Distribution, the Agent warrants to Exterion Media that it is authorised to act as agent on behalf of the Principal.
- 2.3 Following receipt of an Order from the Principal or the Agent, Exterion Media may accept the Order by email or otherwise by sending the Principal or the Agent (as appropriate) a Booking Confirmation. This Agreement will be formed only if a Booking Confirmation is sent by Exterion Media, and will take effect from the date of the Booking Confirmation.

3 **RIGHTS**

- 3.1 In consideration of the payments to be made by the Principal to Exterion Media pursuant to this Agreement, Exterion Media undertakes to the Principal to grant the Promoter access to the Site during the Permitted Hours to administer the Distribution, subject always to the terms of this Agreement.
- 3.2 The Principal acknowledges that:
- 3.2.1 no relationship of landlord and tenant is created by this Agreement, and no property rights are granted pursuant to clause 3.1;
- 3.2.2 the Operating Company retains control, possession and management of the Site and neither the Principal nor the Promoter has any right to exclude any person from the Site;
- 3.2.3 the rights granted pursuant to this Agreement are personal to the Principal, are only transferable in accordance with clause 16 and may only be exercised by the Principal or, where expressly stated, the Promoter;
- 3.2.4 to the extent permitted by law, Exterion Media makes no warranty or representation that either the Site or the Station is fit for purpose, of satisfactory quality, safe, or otherwise suitable for the Distribution, and the Principal hereby waives all rights against Exterion Media in relation to the same; and
- 3.2.5 to the extent permitted by law, the Principal's, the Promoter's, and each of their employee's, agent's and subcontractor's entry into and use of the Site and the Station is at their own risk, and the Principal hereby waives all rights against Exterion Media in relation to the same.

LIMITATIONS ON THE RIGHTS GRANTED

Prohibition, interruption or discontinuation at the requirement of the Operating Company

- 3.3 If the Operating Company or National Rail at any time in its absolute discretion prohibits a Distribution or requires the execution of a Distribution at the relevant Station(s) to be interrupted or discontinued then Exterion Media may cancel, interrupt or discontinue such Distribution without prior notice to the Principal or the Promoter, and upon any such action of the Operating Company, Exterion Media may terminate the Agreement whether wholly or in part. In the event of such termination, Exterion Media's liability is limited as outlined in clause 8 below. The provisions of clause 9 shall apply in respect of any compensation payable for any prohibition of a Distribution, or any interruption or discontinuation of a Distribution.
- 3.4 Without prejudice to its rights to terminate this Agreement, Exterion Media may with the Principal's or the Promoter's consent provide an alternative Site elsewhere within the Station and Exterion Media will not be required to provide any refund or credit to the Principal under clause 9 for any period during which the Promoter or the Principal conducts the Distribution at the alternative Site.

Prohibited distributions

- 3.5 The Parties acknowledge that the following categories of Distribution shall not be permitted:
- 3.5.1 Distributions which do not comply with the Advertising Standards;
- 3.5.2 any Distribution of a type described in the Schedule; and

3.5.3 in respect of any individual Operating Company, any type of distribution notified to the Principal or the Promoter by Exterion Media or the relevant Operating Company in writing as unacceptable, including any distribution which in the opinion of Exterion Media or the relevant Operating Company might adversely affect in any way the interests of the relevant Operating Company,

and where any such Distribution is prohibited, interrupted or discontinued, Exterion Media will not be required to provide any refund or credit to the Principal under clause 9:

- (a) to the extent that the Distribution does not comply with the restrictions in sub-clauses 3.5.1 and 3.5.2; or
- (b) to the extent that any Distribution does not comply with sub-clause 3.5.3, provided such restriction was notified to the Principal or the Promoter at least ninety (90) days prior to the start of the Distribution Period.

3.6 The Principal acknowledges that the Manager, on behalf of the Operating Company, shall without having to give any reason, have total discretion to refuse permission to the Promoter and the Principal to use, display or supply any product or service including any printed publication, commercial exhibition, concourse distribution or advertisement or display used by the Promoter or the Principal, if the Manager considers such advertisement or display to be offensive or illegal, and in such case the Principal will remain liable to pay the Charges as agreed. The Manager's decision on all aspects of the activities carried out in/on the Site by the Promoter or Principal shall be final.

4 THE CHARGE, OTHER FEES AND PAYMENT TERMS

4.1 The Principal agrees to pay Exterion Media the Charge on the terms set out in this Agreement.

4.2 Wherever in this Agreement provision is made for the Principal to pay any sum on which VAT is payable, the Principal shall pay in addition to such sum, VAT thereon at the rate appropriate at the time of supply.

4.3 Subject to clause 4.4, the Principal shall pay Exterion Media the full amount of the Charge within three Business Days of receipt of the Booking Confirmation.

4.4 Where the date of the Booking Confirmation is more than 30 days prior to the beginning of the Distribution Period, the Principal shall within three Business Days of receipt of the Booking Confirmation pay to Exterion Media a sum equal to 25% of the Charge. The Principal shall pay the remaining 75% of the Charge no less than 30 days prior to the beginning of the Distribution Period.

4.5 The Promoter acknowledges that the rights granted in clause 3 are conditional upon payment of the Charges within the times set out in this clause 4.

4.6 Payment may be made by the Principal by such payment method as may be agreed by Exterion Media, save that where the start of the Distribution Period is fewer than seven days prior to the date of the Booking Confirmation, the Principal must pay the Charge by credit/debit card or by BACS payment.

4.7 To the extent that any part of the Charge is paid with or through American Express, the Principal agrees to pay Exterion Media an additional transaction charge of 3.0% of the total amount of the Charge (and applicable VAT) paid using American Express. Such additional transaction charge will be payable notwithstanding that Exterion Media does not provide the Principal with an invoice for the same, and shall be paid at the same time as such amount of the Charge.

4.8 In the event that the Principal wishes to change the details of any booking, any amendment to the booking must be agreed by the Parties and shall be subject to a £100 administration fee payable by the Principal on receipt of the revised Booking Confirmation.

4.9 In addition to the Charge, the Principal shall be responsible for any business rates and other costs and outgoings relating to the Distribution which may be or become payable by virtue of the rights granted by Exterion Media.

5 PRINCIPAL WARRANTIES AND INDEMNITY

5.1 The Principal:

5.1.1 undertakes to procure that the Distribution will be of a type that is permitted under this Agreement;

5.1.2 undertakes to obtain and pay for, or procure that the Promoter shall obtain and pay for, all permits, licences and consents necessary to conduct the Distribution, including all licences and

consents necessary for the reproduction of any copyright material contained in any materials used in the Distribution; and

- 5.1.3 warrants that nothing in the materials used in the Distribution will infringe the copyright or other intellectual property rights of, or defame, any person.

The Parties acknowledge that approval of a Distribution is an affirmation by Exterior Media that the Distribution is booked with the Operating Company and not that the Distribution complies with the Advertising Standards or the other requirements set out in this Agreement.

- 5.2 The Principal shall indemnify Exterior Media against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Exterior Media arising out of or in connection with any one or more of the following:

5.2.1 any breach of the warranties and undertakings contained in clause 5.1;

5.2.2 the Principal's breach or negligent performance or non-performance of this Agreement;

5.2.3 the negligence or wilful misconduct of the Principal or the Promoter or any of their employees, agents or subcontractors;

5.2.4 the enforcement of this Agreement;

5.2.5 any claim made against Exterior Media for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Distribution;

5.2.6 any claim made against Exterior Media by a third party (including the Promoter) arising out of or in connection with this Agreement or the administration of the Distribution by the Principal or the Promoter, to the extent that such claim arises out of any one or more of the following:

(a) any breach, negligent performance or failure or delay in performance of this Agreement by, or any negligence of, the Principal, its employees, agents or subcontractors;

(b) any action or inaction of the Promoter which, if it had been taken or not taken by the Principal, would have resulted in the breach, negligent performance or failure or delay in performance of this Agreement; and

(c) any failure by the Principal or the Promoter (or their employees, agents or subcontractors) to act professionally in good faith using the degree of skill, care, diligence, prudence, foresight and judgement which would reasonably be expected from a skilled, experienced and market leading operator engaged in services similar to those of the Principal or the Promoter; and

5.2.7 any claim by the Promoter, or any of its employees, agents or subcontractors, or any claim by the Principal's employees, agents or subcontractors, in each case in relation to the Site, the Station, the Distribution or this Agreement.

- 5.3 The indemnity in clause 5.2 shall not cover Exterior Media to the extent that a claim under it results from Exterior Media's negligence, breach of this Agreement or wilful misconduct.

- 5.4 If any third party makes a claim, or notifies Exterior Media of an intention to make a claim, against Exterior Media which may reasonably be considered likely to give rise to a liability under the indemnity in clause 5.2 (for the purposes of this clause 5.4, a "Claim"), Exterior Media shall:

5.4.1 as soon as reasonably practicable, give written notice of the Claim to the Principal, specifying the nature of the Claim in reasonable detail; and

5.4.2 subject to the Principal providing security to Exterior Media to Exterior Media's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Principal may reasonably request to avoid, dispute, compromise or defend the Claim.

6 OBLIGATIONS OF THE PRINCIPAL

- 6.1 The Principal shall provide Exterior Media with, or shall procure that the Promoter shall provide Exterior Media with, a method statement acceptable to Exterior Media and the Operating Company setting out how the Distribution will be undertaken, and the rights granted in clause 3.1 shall be conditional upon

the Principal or the Promoter providing the same prior to the beginning of the Distribution Period. The Principal shall be liable to pay the Charge regardless of whether a method statement is provided.

6.2 The Principal:

- 6.2.1 shall procure that each employee, officer and agent of the Principal and Promoter and of their sub-contractors involved in the administration of the Distribution at the Site shall take all such actions as shall be required by the Manager to:
- (a) sign in and out, on arriving at and leaving the Station, respectively;
 - (b) wear and display identification badges and produce identification on demand; and
 - (c) make good the Site and any other areas used by the Principal or Promoter, and to dispose of waste, including materials distributed by the Principal or Promoter as part of the Distribution;
- 6.2.2 shall, and shall procure that the Promoter shall, prior to administering any Distribution, put in place and comply with a collection and disposal process relating to the materials (if any) forming part of the Distribution (e.g. leaflets or product samples, including food and drink samples) which meets the requirements from time to time of the Operating Company, the Station and the Manager;
- 6.2.3 shall procure that each employee, officer and agent of the Principal and Promoter and of their sub-contractors involved in the administration of any Distribution at the Site which relates to food shall comply with all relevant legislation, then in place, relating to food preparation, handling and related hygiene (including the legislation summarised at <https://www.food.gov.uk/enforcement/regulation/foodlaw>);
- 6.2.4 shall procure that each employee, officer and agent of the Principal and Promoter and of their sub-contractors involved in the administration of the Distribution at the Site shall comply in all respects with:
- (a) Exterion Media's tobacco, drugs and alcohol policy, a copy of which has been provided to the Principal; and
 - (b) all applicable health and safety legislation, regulations, policies, requirements, industry standards and procedures, including all health and safety policies and requirements of the Operating Company and (if appropriate) Network Rail of which the Promoter or Principal is notified;
- 6.2.5 shall procure that each employee, officer and agent of the Principal and Promoter and of their sub-contractors involved in the administration of the Distribution at the Site shall, to the extent required by the Manager or Operating Company, be individually accredited or authorised by the Manager or otherwise have a permit from the Operating Company to carry out the Distribution at the Station;
- 6.2.6 shall procure that all electrical equipment to be used in connection with the Distribution and supplied by or for the Principal or Promoter will have been subject to and passed portable applicable testing (PAT) conducted by a competent and appropriately experienced tester no more than 12 months prior to the end of the Distribution Period, and the Principal shall, or shall procure that the Promoter shall, provide evidence of the same on demand; and
- 6.2.7 shall procure that all other structures and equipment to be used in connection with the Distribution shall be itemised in the method statement to be provided in accordance with clause 6.1, shall conform to all relevant safety regulations and shall in any event be safe for use at the Station.

6.3 The Principal undertakes to Exterion Media:

- 6.3.1 to comply with, and to procure that the Promoter shall comply with, the Site Specific Instructions for the relevant Station and/or Site and all procedures, regulations, restrictions and instructions of Network Rail and the Operating Company of which the Principal or Promoter has properly been made aware by Exterion Media, the Operating Company or the Manager together with any reasonable and necessary additional procedures, restrictions and instructions stipulated by Exterion Media from time to time;
- 6.3.2 to procure that all staff and representatives of the Principal or Promoter, their advertisers and advertising agencies visiting the relevant Station, or Site or Operating Company property for the purposes of the Distribution will observe, comply with and perform such rules and directions as the relevant Operating Company or Exterion Media itself may from time to time notify to the

Principal or the Promoter directly or make or give in the interest of safety or security, including without limitation rules and directions as to the possession of identity documents, and the Principal acknowledges that any person responsible for the safety and operation of the relevant Station or Site or any Operating Company property and (where appropriate) any adjoining railways shall have the discretion to refuse or withdraw rights of access or impose conditions thereon if in his or her opinion it is necessary to meet safety or operational requirements;

- 6.3.3 to procure: (i) (as appropriate or required in relation to access to the relevant Station) that each of the Principal's and Promoter's employees and agents at the Principal's or Promoter's expense attend and pass all safety training courses approved by the relevant Operating Company; (ii) that such employees and agents carry evidence of their having passed the same at all times whilst at the Station; and (iii) that such employees and agents produce such evidence on demand to any person authorised to inspect it by the relevant Operating Company;
- 6.3.4 in respect of any Distribution: (i) to provide, and to procure that the Promoter shall provide, its employees, sub-contractors and agents with proper training, including full instruction in Network Rail's and the Operating Company's safety requirements; (ii) formally to discipline, and to procure that the Promoter shall formally discipline, any of its employees, sub-contractors and agents if Exterior Media or the relevant Operating Company have given notice of a breach of safety requirements by such person(s); (iii) to ensure, and to procure that the Promoter shall ensure, insofar as either of them is able that employees, sub-contractors and agents engaged in the Distribution are not exposed to risk to their health or safety whilst they are at the relevant Station and comply with all legislation and bye-laws applicable to their work at each relevant Station; and (iv) to ensure, and to procure that the Promoter shall ensure, that all employees and agents engaged in the Distributions at any Station conform to the rules of conduct for the relevant Operating Company's staff as supplied from time to time by the Operating Company;
- 6.3.5 to: (i) comply with, and to procure that the Promoter shall comply with, any conditions that the Operating Company may impose in respect of any Distribution, on a case by case basis; and (ii) ensure that, and to procure that the Promoter shall ensure that, the use of the Site or other area in which the Distribution is to be made will be consistent with a high class retail environment;
- 6.3.6 to comply with, and to procure that the Promoter shall comply with, all statutory laws and regulatory and industry standards and requirements relating to the distribution of printed publications to the public or the commercial exhibition, concourse distribution or sampling of any product or service by members of the public, and obtain all licences, consents and permits required to comply with such laws, standards and requirements;
- 6.3.7 to observe, perform and comply in all respects with, and to procure that the Promoter shall observe, perform and comply in all respects with, the health and safety policies, requirements and procedures of the relevant Operating Company and (if appropriate) Network Rail as notified to the Principal or the Promoter in writing and all relevant health and safety statutes, regulations and industry standards;
- 6.3.8 at all relevant times to employ and maintain, and to procure that the Promoter shall at all relevant times employ and maintain, adequate numbers of staff of such qualification, character, experience and capability as may be required to ensure that the Principal is not in default of its obligations under the Agreement;
- 6.3.9 to report, and to procure that the Promoter shall report, to Exterior Media and the relevant Operating Company any accidents, incidents and near misses involving any of the Principal's or the Promoter's staff, sub-contractors or agents or any third parties involving Operating Company property or activities pursuant to the terms of the Agreement;
- 6.3.10 to conduct its activities, and to procure that the Promoter shall conduct its activities, so as not to: (a) interfere with the activities of Exterior Media or any Operating Company, or endanger the safety of the relevant Exterior Media or Operating Company staff, or of any passengers, customers or tenants at the Station; or (b) interfere with the operations of Exterior Media or any Operating Company; or (c) impede or restrict the use of the relevant Operating Company's property by their staff, tenants, passengers, customers or any other train operating company; or (d) impede or restrict Exterior Media's or the relevant Operating Company's staff or tenants in the execution of their duties, other than as expressly provided for in the Agreement;
- 6.3.11 to undertake and execute, and to procure that the Promoter shall undertake and execute, the Distribution in a safe, professional and workmanlike manner; and

- 6.3.12 promptly to follow, and to procure that the Promoter shall promptly follow, any instruction from Exterion Media to remove or cease any Distribution.
- 6.4 The Principal shall indemnify Exterion Media for any electricity costs arising out of the execution of the Distribution.
- 6.5 Exterion Media shall have no liability to the Principal or to any other person for failure to comply with its obligations under clause 3.1 or any other obligations under this Agreement to the extent that the Principal has failed to comply with its obligations under this clause 6 or any other obligations of the Principal under this Agreement.
- 7 INSURANCE**
- 7.1 The Principal shall procure that during the term of this Agreement the Promoter shall maintain in force the following insurance policies with reputable insurance companies:
- 7.1.1 employer's liability insurance in respect of the Promoter's liability for any person in the Promoter's employment in the sum of not less than £10,000,000 (ten million pounds) per incident or such other minimum level as may from time to time be required by law; and
- 7.1.2 public liability insurance which provides an indemnity of not less than £5,000,000 (five million pounds) for any one incident or series of incidents arising out of any one event in respect of liability for death of or injury to any person, and loss of or damage to property.
- 7.2 Where the Principal is involved in the running of the Distribution or is present at the Site or Station or the Operating Company's premises in connection with this Agreement, the Principal shall maintain in force the following insurance policies with reputable insurance companies:
- 7.2.1 employer's liability insurance in respect of the Principal's liability for any person in the Principal's employment in the sum of not less than £10,000,000 (ten million pounds) per incident or such other minimum level as may from time to time be required by law; and
- 7.2.2 public liability insurance which provides an indemnity of not less than £5,000,000 (five million pounds) for any one incident or series of incidents arising out of any one event in respect of liability for death of or injury to any person, and loss of or damage to property.
- 7.3 The Principal shall procure that each sub-contractor or agent of the Principal or Promoter which goes onto Operating Company property in connection with the Distribution shall maintain the levels of insurance set out in sub-clauses 7.1.1, 7.1.2, 7.2.1 and 7.2.2 as if references to the Principal or Promoter therein were references to such sub-contractor or agent, provided however that where any such sub-contractor or agent has no employees, it shall not be required to maintain employer's liability insurance.
- 7.4 The Principal shall not, and shall procure that the Promoter, and each sub-contractor and agent of the Principal and the Promoter shall not, do anything to invalidate its insurance policies or to prejudice any person's entitlement under the same.
- 7.5 The Principal's liabilities under this Agreement shall not be deemed to be released or limited by the Promoter, or sub-contractor or agent of the Promoter, taking out the insurance policies referred to in this clause 7.
- 8 LIABILITY**
- 8.1 Subject to clause 8.6, each claim including any purely contingent claim (for the purpose of this clause 8.1, a "**Claim**") arising as a result of the breach by Exterion Media of its obligations under this Agreement shall be submitted (or in the case of any contingent claim, provisionally notified) to Exterion Media in writing within twenty-eight (28) days following the end of the relevant Distribution Period with sufficient information to enable Exterion Media to consider the Claim. Exterion Media shall have no liability in respect of any Claim submitted or notified after that date.
- 8.2 Subject to clause 8.6, if Exterion Media shall be liable to the Principal under the Agreement, Exterion Media's liability shall not exceed the amount of the Charge payable under the Agreement.
- 8.3 In the event of any agreed errors by Exterion Media in the performance of its obligations under the Agreement, the error may be remedied by a substitution of such additional Site(s) or extension of the Distribution Period (or both) as may be agreed between the Parties (whether orally or in writing). Performance by Exterion Media of such agreed substitution or extension will constitute a good discharge of Exterion Media's obligations in respect of the Distribution.
- 8.4 Subject to clause 8.6, the terms of the Agreement set out the full extent of Exterion Media's obligations and liabilities.

8.5 Subject to clause 8.6, the Parties agree that Exterior Media shall not be liable to the Principal for any loss of profits, revenues, goodwill, business or anticipated savings or any indirect or consequential loss whatsoever arising out of or in connection with this Agreement, in each case whether or not Exterior Media has been advised of the possibility of such loss.

8.6 Nothing in the Agreement shall exclude or limit either Party's liability for death or personal injury arising from its negligence, or for its fraud or fraudulent misrepresentation, or for any other liability to the extent which it cannot be lawfully excluded.

9 REFUND OR CREDIT FOR UNAVAILABILITY

9.1 Subject to clauses 3.5, 3.6, 8.3 and 9.3, if any Site approved by Exterior Media is not, following such approval, available for the Distribution Period, including as a result of any prohibition, interruption or discontinuation of the Distribution at the request of the Operating Company, then Exterior Media shall refund or credit to the Principal a proportionate part of the Charge payable by the Principal for the part of the Distribution Period during which the Site was not available. For the purpose of calculating such refund or credit, Exterior Media shall take into account the proportion of time that the Site was not available. Subject to clause 9.2, such remedy shall be an exclusive remedy and provided Exterior Media issues such refund or credit, Exterior Media shall have no further liability to the Principal. For the avoidance of doubt, Exterior Media shall not be liable for damages or, subject to this clause 9.1, compensation, for any loss or expense whatsoever or inconvenience to the Principal arising in relation to any unavailability of the Site.

9.2 Any refund or credit which the Parties agree is owing under clause 9.1 may be satisfied by a substitution of such additional Site(s) or extension of the Distribution Period (or both), in either case as may be agreed between the Parties (whether orally or in writing). Any such agreed substitution or extension by Exterior Media will constitute a good discharge of Exterior Media's obligations under clause 9.1 and Exterior Media shall have no further liability in relation to any unavailability of the Site.

9.3 For the purposes of clause 9.1, no refund, credit or other compensation shall be payable in respect of any day(s) of the Distribution Period if the Site is available for at least 95% of the specified hours for such day.

10 SET-OFF

Exterior Media may at any time, without notice to the Principal, set off any liability of the Principal to Exterior Media against any liability of Exterior Media to the Principal, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by Exterior Media of its rights under this clause 10 shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

11 FORCE MAJEURE

Exterior Media shall not be liable for any adverse impact on any Distribution, or for any delay in performing, or failure to perform, any of its obligations under this Agreement, if such adverse impact, delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances Exterior Media shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 30 days, the Principal may terminate this Agreement with immediate effect on giving written notice to Exterior Media.

12 NOTICES

12.1 Subject to clauses 12.2 and 12.4, any notice given pursuant to this Agreement shall be in writing and in English and delivered to the address, facsimile number (if any) or email address set out at in this Agreement, including any Order or Booking Confirmation, or to such other address, email address or facsimile number as may have been notified by the Party to whom it is to be given. Any notice to be given to Exterior Media shall be marked "for the attention of the General Counsel".

12.2 A notice, document or communication may be given by email only to the extent that this Agreement expressly provides for the same.

12.3 Any notice or other communication pursuant to this Agreement which is given by hand or sent by email or facsimile shall be deemed to have been duly given:

12.3.1 if delivered by courier, at the time of delivery;

12.3.2 if sent by recorded delivery, 48 hours after posting if the recipient of the notice is within the UK or 5 days after posting if the recipient of the notice is outside the UK; and

12.3.3 if sent by facsimile or email, upon transmission to the correct address provided such notice is confirmed within 48 hours by either courier delivery or posting a copy by recorded delivery to the appropriate address,

provided that if the date on which a notice is received is not a Business Day and/or is not received during normal office hours of 9.00am to 5.00pm, that notice will instead be deemed to be duly given at 9.00am on the next Business Day.

12.4 Clause 12.1 does not apply to any instructions or requirements issued by Exterion Media, the Manager, the Operating Company or Network Rail to the Promoter or the Principal in relation to the Distribution, including the Site Specific Instructions. Any such instructions or requirements may be sent by email.

13 **TERMINATION**

13.1 Exterion Media may terminate the Agreement forthwith by notice in the circumstances described in clause 3.3.

13.2 The Principal may terminate the Agreement by notice in accordance with clause 11.

13.3 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

13.3.1 the other Party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 days after being notified in writing to do so;

13.3.2 the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

13.3.3 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

13.3.4 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

13.3.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party (being a company);

13.3.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party (being a company);

13.3.7 the holder of a qualifying floating charge over the assets of that other Party (being a company) has become entitled to appoint or has appointed an administrative receiver;

13.3.8 a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;

13.3.9 the other Party (being an individual) is the subject of a bankruptcy petition or order;

13.3.10 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;

13.3.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.3.3 to 13.3.10 (inclusive);

13.3.12 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

13.3.13 the other Party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or

13.3.14 any warranty given by the other Party in this Agreement is found to be untrue or misleading.

13.4 For the purposes of clause 13.3.1, “**material breach**” means a breach by the Principal of any requirement to pay the Charge, or a breach (including an anticipatory breach) by either Party that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from a substantial portion of this Agreement in respect of the Distribution Period. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

13.5 For the purposes of this Agreement, the occurrence of any of the matters or circumstances listed in clause 13.3 by or in respect of the Promoter shall be deemed by the Parties to be an occurrence of such matter or circumstance by or in respect of the Principal, giving Exterion Media the right to terminate.

14 **CONSEQUENCES OF TERMINATION**

14.1 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in or come into full force and effect as intended notwithstanding such termination or expiry.

14.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

14.3 Following termination of the Agreement or cancellation of a Distribution the Principal will pay to Exterion Media forthwith all outstanding amounts owing to Exterion Media plus all interest which is payable (if any).

14.4 Interest is payable to Exterion Media on overdue amounts at a rate of 4% per annum (pro rated over the period from the date the amounts became due and payable until the date such amounts were received by Exterion Media).

14.5 In the event of termination by Exterion Media under clause 13.3, Exterion Media may enter into any agreements with third parties as Exterion Media considers appropriate to replace the scheduled Distribution.

14.6 In the event of a termination by Exterion Media in accordance with clause 3.3, Exterion Media shall be entitled to be paid by the Principal the full rate for the Sites in question up to and until the time at which the Distribution is discontinued together with any other costs and Charges due and owing by the Principal to Exterion Media. Subject to any refund or credit to be given in accordance with clause 9, Exterion Media shall not be liable to pay any damages losses or expenses to the Principal as a result or in respect of such discontinuation, interruption, suspension, variation or cancellation.

15 **NO PARTNERSHIP OR AGENCY OR EMPLOYMENT**

15.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

15.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

15.3 This Agreement does not set up or create an employer/employee relationship, each Party being individually responsible only for its obligations as set out in this Agreement and, in addition, the Parties agree that their relationship is one of independent contractors. Neither Party shall be bound by the acts or conduct of the other, save for acts or conduct which the first Party specifically authorises in writing in advance.

16 **TRANSFER AND ASSIGNMENT**

16.1 The Principal agrees and acknowledges that Exterion Media shall be entitled at any time to assign or transfer all or any of Exterion Media’s rights or obligations under the Agreement to the Operating Company, any successor to the Operating Company, or any person nominated by the Operating Company.

16.2 The Principal shall, at Exterion Media’s request and expense, cooperate with Exterion Media to procure the novation of the Agreement to the Operating Company, any successor to the Operating Company, or any other party nominated by the Operating Company on such terms as Exterion Media may reasonably

require in relation thereto and shall execute such documentation and take such other action as Exterior Media may reasonably request in relation to such novation. For the avoidance of doubt, the Parties agree that a novation which does not increase the aggregate amount of the Principal's liability under the Agreement (as novated) shall be deemed to be reasonable.

16.3 The Principal may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of Exterior Media.

16.4 Except as provided above, Exterior Media may not assign its rights under this Agreement without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed).

17 IMPLIED WARRANTIES

To the maximum extent permitted by law, all terms, conditions, representations and warranties, which are not expressly set out in this Agreement, are excluded including all implied and statutory terms, warranties and conditions relating to satisfactory quality or fitness for purpose.

18 SEVERANCE

18.1 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 18 shall not affect the validity and enforceability of the rest of this Agreement.

18.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

19 ENTIRE AGREEMENT

19.1 This Agreement constitutes the entire agreement between the Parties and (to the extent permissible by law) supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter, provided that neither Party is attempting to exclude any liability for fraudulent statements.

19.2 Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it, and each Party agrees that (except in the case of fraud) it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

20 WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21 RIGHTS AND REMEDIES

Save as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

22 CONFIDENTIALITY

22.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by clause 22.2 or clause 22.3.

22.2 Each Party may disclose the other Party's confidential information:

22.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement, and each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 22 as if each such person were a party to this Agreement; and

- 22.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 22.3 The Principal may disclose Exterior Media's confidential information to the Promoter for the purposes of ensuring compliance with the Principal's obligations under this Agreement, and the Principal shall ensure that the Promoter complies with this clause 22 as if the Promoter were a party to this Agreement.
- 22.4 Subject to clauses 22.3 and 22.4, neither Party shall use any other Party's confidential information for any purpose other than to perform its obligations under this Agreement.
- 23 **VARIATION OF TERMS**
- No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 24 **THIRD PARTIES**
- A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person which is not a Party to this Agreement.
- 25 **GOVERNING LAW**
- This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 26 **JURISDICTION**
- Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE

LIST OF RESTRICTIONS ON THE CONTENT AND EXECUTION OF DISTRIBUTIONS

The Principal acknowledges and agrees that no Distribution, and no materials used in any Distribution, shall be permitted that:-

- (in the case of Northern Rail and Newcastle Metro Stations) involves giving away free newspaper publications prior to noon;
- depicts train travel in, or the Operating Company's services in, a negative light;
- relates in any way to soliciting litigation work (whether on a no-win-no-fee basis or otherwise);
- involves promoting (including giving away samples of) alcohol or tobacco;
- depicts men, women or children in a sexual manner, or includes the display of nude or semi-nude figures in an overtly sexual context (for example, whilst the use of underdressed people in most underwear advertising may be seen as an appropriate context, gratuitous use of an overtly sexual nature would be viewed as unacceptable);
- depicts or refers to indecency or obscenity, depicts bodily functions, uses obscene or distasteful language;
- promotes lap-dancing, 'gentlemen's clubs', escort agencies, or massage parlours;
- depicts direct and immediate violence to anyone;
- condones or provokes anti-social behaviour;
- promotes films which have not been granted permission for public exhibition or which do not show the required certificate;
- promotes cars/personal motor vehicles as an alternative to public transport;
- mocks or negatively depicts public transport and other sustainable forms of transport such as cycling;
- mocks or negatively depicts any individual or group on the grounds of their race (ethnic or national origin), gender, creed or religion, disability, sexual preference, appearance or age;
- promotes any belief (including any lack of any belief); or
- promotes any political party or parties or a political cause.