

**1. DEFINITIONS**

1.1 Words and expressions in these Terms and Conditions have the following meanings unless the context otherwise requires:

"**Acceptance Policy**" means the Contractor's sales and copy acceptance policy from time to time (as set out on the Contractor's website at <http://www.exterionmedia.com/uk/useful-info/campaign-support/>).

"**Advertisement Copy**" means advertising material (including posters, digital format and advertising material) intended for display by the Contractor, and includes any advertisement copy approved or deemed to be approved in accordance with clause 6.8.

"**Advertising Standards**" means all statutory and legal requirements and regulations in force relating to the content of advertisements or promotional messages, including The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (12<sup>th</sup> edition).

"**Agent**" means any person, firm or body corporate acting or purporting to act as agent of the Principal to enter into and/or act in relation to this Agreement.

"**Agreement**" means a legally binding agreement between the Parties formed in accordance with clause 2 and consisting of the Order, the Confirmation of Order and these Terms and Conditions.

"**Artwork**" means the artwork, information and materials required or requested by the Contractor for the purpose of undertaking (or procuring the undertaking of) Production Services.

"**Confirmation of Order**" means the document or written communication headed "Confirmation of Order" sent by the Contractor to the Principal.

"**Confirmed Order**" means an Order as accepted by a Confirmation of Order in accordance with clause 2.1 (and in the event of any discrepancy between the Order and the Confirmation of Order, the information contained in the Confirmation of Order will prevail in accordance with clause 2.2).

"**Contractor**" means Exterion Media (UK) Limited (registered number: 02866133) whose registered office is at 7<sup>th</sup> Floor, Lacon London, 84 Theobald's Road, London, WC1X 8NL and/or its affiliates or their successors in title.

"**Copy Deadline**" means, in respect of when the Contractor is undertaking Production Services for the Principal, either:

- (a) the date by which the Artwork has to be delivered to the Contractor, or agreed with by the Contractor, as specified in the Confirmed Order; or
- (b) if no date is specified in the Confirmed Order, four (4) weeks prior to the Start Date.

"**Copy Guidelines**" means, in relation to display at the Site Types, any restrictions relating to Advertisement Copy content made available (including via the Contractor's website at [http://www.exterionmedia.com/uk/~media/Files/UK/Legal/TFL\\_Advertising\\_Policy\\_June\\_2015.pdf](http://www.exterionmedia.com/uk/~media/Files/UK/Legal/TFL_Advertising_Policy_June_2015.pdf)) to the Principal prior to the submission of an Order, together with any specific restrictions imposed from time to time by the Landlord relating to Advertisement Copy content.

"**Design**" means the service of designing advertising material for use in Advertisement Copy.

"**Digital Advertisement System**" means the infrastructure, network, hardware and software used by the Contractor for the scheduling, transmission and display of digital format Advertisement Copy at the Sites.

"**Display Period**" means, in respect of a campaign (or the relevant part thereof) to be displayed on:

- (a) any traditional format Site Type, the period between the end of the Posting Period for the relevant Site Type and the beginning of the Removal Period for such Site Type;

- (b) any digital Site Type (other than an Interactive Media Site Type), the sequence or proportion of display time specified in the Confirmed Order; and

- (c) any Interactive Media Site Type, the period agreed with the Principal.

"**Draft Copy**" has the meaning given in clause 6.3.

"**Due Date**" means the date by which payment is due as specified on the Confirmed Order, and to the extent that no date is specified, the Due Date in respect of any amount invoiced shall be twenty-eight (28) days from the date of the invoice.

"**End Date**" means the date specified as the "end date" or the "expiry date" in the Confirmed Order by reference to which the Removal Period for an advertising campaign shall be calculated (also referred to as the "out of charge date").

"**Fee**" means the amount(s) for the display of advertising and the Production Services (if any) specified in the Confirmed Order.

"**Force Majeure**" shall include natural disasters; epidemic; lightning, storms or tempest; fire, flood or explosion; war (whether declared or not), warlike operations, hostilities, invasion, act of foreign enemies or terrorist acts; rebellion, revolution, insurrection, military or usurped power and civil war; nuclear, chemical or biological attacks; ionising radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof; malicious damage and vandalism caused by anyone other than the Contractor; accidents or breakdown of machinery or plant; strikes, lock-outs, industrial action, riots and civil unrest; electrical failures; bursting or overflowing of water tanks, pipes or other apparatus; closure of or restrictions on any transport system; viruses, worms, Trojan horses or other malicious content that affect any digital Advertisement Copy; legal restrictions; impact of aircraft or other aerial device or things dropped from them; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; loss, for any reason, of the right to use a Site or Site Type; and any reason beyond the Contractor's control.

"**Intellectual Property Rights**" means all intellectual property rights including but not limited to copyright and related rights, database rights and trade marks.

"**Interactive Data**" means all data which is captured or collected on any Digital Advertisement System using Interactive Media and which has been anonymised so that it does not contain any personal data (as defined under the Data Protection Act 1998).

"**Interactive Media**" means any advertisement which uses online or offline software (including NFC technology but excluding QR technology) or media to engage, and enable the collection of data from, members of the public.

"**Landlord**" means each person, firm, or company with whom the Contractor has a concession to display advertising on their property.

"**Month**" means a calendar month.

"**Order**" means an order sent by or on behalf of the Principal to the Contractor for the Production Services and/or the display of Advertisement Copy (which is subject always to these Terms and Conditions).

"**Overshow**" means the display by the Contractor of the relevant Advertisement Copy at Sites for a period of time that is beyond the Display Period and/or in excess of the volume of Advertisement Copy that it is required to display pursuant to the Confirmed Order.

"**Parties**" means the Contractor and Principal.

"**Posting Period**" means, in respect of each Site Type, the period specified in the Annex to these Terms and Conditions by reference to which the Contractor will affix or otherwise initiate the display of Advertisement Copy.

"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, in all cases irrespective of what may be claimed in any additional correspondence or in any email.

"Printing" means the service of printing Advertisement Copy.

"Production Services" means Design and/or Printing (as appropriate).

"Production Specifications" means the document or documents provided to the Principal containing the Contractor's technical specifications relating to the provision of Artwork (where the Contractor is responsible for Production Services under the Confirmed Order) and the production of Advertisement Copy, including any applicable digital content specifications or traditional format specifications relating to dimensions, format, printing materials, suppliers and/or other printing specifications.

"Rebate" means any rebate, bonus, refund, incentive, goodwill payment, discount or other benefit provided by the Contractor or any of its affiliates.

"Removal Period" means, in respect of each Site Type, the period specified in the Annex to these Terms and Conditions by reference to which the Contractor will remove displays of Advertisement Copy, subject to the terms of this Agreement.

"Sites" means the locations at which the Contractor displays advertisements, including (but not limited to) each of the Site Types.

"Site Types" means the different types of advertising format for the specified locations as listed in the Annex to these Terms and Conditions.

"Special Advertisement" means special advertisement products offered by the Contractor including "Mega-Rear", "Fully Wrapped Display", "Mega Side", "Super Square", "Silver Centre", "Digiwall", "Megawall", "Mega Escalator", "Mega DEP", "Escalator Frieze", "Globe" (mixture of vinyl long postings and traditional 12 sheets, 4 sheets and 6 sheets), "Vinyl Long Posting", "Ceiling Vinyl", "Wrapped Corridor", "Pillar Wrap", "180 Degree Wrap", "Banner", "Corridor Frieze", "Arch", "Escalator Arch", "Headwall", "Station Domination", "Exit Domination", "5 ways", "Stairwell Frieze", "Window Vinyl", "Escalator Fin", "Travolator", "Corridor Vinyl", "Bespoke Vinyl Panel" / "Odd Size Vinyl", "PED Vinyl", "Framed Spectacular", "Landmark Plus", "Special Build 6 Sheets" and "Floor Graphics" and any other product designated as a "Special Advertisement" by the Contractor in the Confirmed Order.

"Start Date" means the date specified as the "start date" or the "in charge date" in the Confirmed Order by reference to which the Posting Period for an advertising campaign shall be calculated.

"Terms and Conditions" means these general terms and conditions.

"Working Day" means any day from Monday to Friday inclusive except any public holiday in London.

1.2 Any references to statutes, regulations, self-regulation, codes, and guidance are to be interpreted as references to such provisions as amended, consolidated, supplemented or re-enacted (with or without modification) from time to time, and the use of the words "include" or "including" is not to be interpreted as limiting the terms of this Agreement.

1.3 Any reference to advertisements in a digital format will include Interactive Media.

## **2. FORMATION OF CONTRACT AND APPLICATION OF THESE TERMS AND CONDITIONS**

2.1 Subject to the provisions of this clause 2, any Order that has been placed by or on behalf of the Principal, and accepted by the Contractor by sending a Confirmation of Order, will constitute a contract incorporating these Terms and Conditions. No contract will be formed unless the Contractor sends a Confirmation of Order.

2.2 If there is any discrepancy between the information set out in the Confirmation of Order and the information set out in the Order, the Principal must notify the Contractor promptly, and in any event within three (3) Working Days following receipt of the Confirmation of Order, of the discrepancy. If the Principal sends such notice within this timeframe then no contract will be formed unless and until the Contractor issues a corrected Confirmation of Order. If the Principal does not send such notice within this timeframe then a contract will be deemed to have been formed on the basis of the Confirmation of Order (notwithstanding the discrepancy), and will only be amended if agreed in writing by the Contractor.

2.3 Once the Principal has sent a validly signed Order, such Order will only be revocable if the Contractor does not send a Confirmation of Order within seven (7) days of receipt of the Order. Any purported revocation of the Order before that time will be void. Any revocation of the Order must be made by giving written notice to the Contractor. The Contractor may send a Confirmation of Order at any time up until a revocation has been received and, if it does so, the Principal may no longer revoke the Order.

2.4 The Parties agree that an Agent may sign and/or submit an Order incorporating these Terms and Conditions where the Agent identifies, or has identified, the Principal under such Order. To the extent that any Order is sent to the Contractor without specifying the identity of the Principal, the parties agree that the person, firm or company sending the Order shall be the Principal.

2.5 The Principal shall be ultimately responsible for all matters connected with the Agreement (including without limitation the payment of Fees). Where an Order has been placed through an Agent, the Contractor may deal with the Agent in all respects in connection with this Agreement as though it were dealing with the Principal. This means, without limitation, that:

- (a) any obligation of the Contractor to give the Principal notice, provide the Principal with draft Advertisement Copy, or to provide any other thing to the Principal will be duly discharged by the Contractor giving or providing such notice, draft Advertisement Copy or other thing to the Agent; and
- (b) the Contractor may rely on or give any communication from or to the Agent as though it were a communication from or to the Principal.

2.6 In signing and/or submitting an Order the Agent (on its own behalf) warrants and represents that it is authorised to act as agent on behalf of the Principal in all respects in connection with this Agreement, and indemnifies and will keep indemnified the Contractor for any losses (including any failure by the Principal to pay sums due under the Agreement) incurred by the Contractor as a result of the Agent not having such authority.

## **3. VARIATION OF TERMS AND FUTURE ORDERS**

3.1 Any amendment to a Confirmed Order or the Terms and Conditions must be made in writing and signed by or on behalf of the Principal and the Contractor. For the avoidance of doubt, every Confirmed Order will be for a specified advertiser, and any change to the advertiser must be agreed to in writing by the Contractor. The Contractor's customer services department will have authority to agree any amendments to the details set out in the Confirmed Order, but any changes to the Terms and Conditions must be approved in writing by a senior member of the Contractor's legal team and a statutory director of the Contractor. The authorised person nominated by the Principal in any Order will have authority to agree any amendments.

3.2 Without prejudice to clause 25, no purchase order (other than the Order) or standard terms and conditions (other than the Terms and Conditions) issued, whether before or after formation of this Agreement, by or on behalf of the Principal will be binding on the Contractor or will vary this Agreement. This is the case even if a purchase order or standard terms and conditions are referred to in correspondence by the Contractor.

3.3 The Contractor reserves the right to revise its standard terms and conditions from time to time, on the basis that any order or agreement entered into will incorporate the Contractor's standard terms and

conditions at the relevant time. Accordingly, the Principal should ensure that they review the standard terms and conditions provided to the Principal (including these Terms and Conditions) prior to entering into any order or agreement with the Contractor. The Contractor will post any revised terms and conditions on the Exterion Media website (<http://www.exterionmedia.com/uk>). The Principal's placement of an order after any such revision has been made will be an acceptance by the Principal or the Agent (as appropriate) of the terms existing at the time such order is placed.

#### **4. DISPLAY OF ADVERTISEMENT COPY**

- 4.1 The Contractor will, subject to these Terms and Conditions and unless otherwise agreed, procure that at least the agreed value of Advertisement Copy is affixed or displayed at available Sites for the full Display Period. The Contractor may remove Advertisement Copy in accordance with the relevant Removal Period(s), provided always that (unless otherwise agreed) the Contractor shall be entitled to display Advertisement Copy beyond the end or expiry date specified in the relevant Confirmed Order at no cost to the Principal.
- 4.2 The agreed value of Advertisement Copy will, on each day during the Display Period, be 95% of the value of Advertisement Copy set out in the Confirmed Order. If a daily value of the Advertisement Copy is not set out in the Confirmed Order, this will be calculated as the total value for the Display Period divided by the number of days in the Display Period.
- 4.3 In calculating the value of Advertisement Copy displayed in connection with this Agreement (including for the purposes of calculating the value of any Overshow or any compensation based on a failure to display the agreed value of Advertisement Copy) the rates set out in the Confirmed Order (or the rates on which a price set out in the Confirmed Order has been calculated) will be applied, but without taking account of any Rebate. Where the Confirmed Order identifies specific Sites at which the Advertisement Copy is to be displayed, the value of any Advertisement Copy displayed at different Sites than those identified will be calculated on the basis of rates determined using similar methodology to the methodology used to calculate the rates set out for the specific, named Sites (e.g. applying the same percentage reduction from the Contractor's standard rate card).
- 4.4 When the Principal is entitled under the Confirmed Order to a change of Advertisement Copy on display at a given Site commencing on a stipulated date, the Contractor shall complete such change within the applicable Posting Period as if the stipulated date were the Start Date for a new campaign, provided the Contractor has received the relevant Advertisement Copy or Artwork in accordance with clause 5 below.
- 4.5 The Contractor reserves the right to use its discretion in selecting which Advertisement Copy to display at which Sites and to substitute planned Sites for other Sites of a similar quality where the planned Sites are not available or the Contractor otherwise considers this is necessary or desirable. If no Sites of a similar quality are available, the Contractor shall, at its sole discretion, either: (a) refund the pro-rated part of the Fee that relates to the remaining Display Period for the Advertisement Copy that is not, or is no longer, displayed, in which case it will have no further obligation to display that Advertisement Copy; or (b) provide an Overshow to the Principal with an equivalent value to the value of the remaining Display Period for the Advertisement Copy that is not, or is no longer, displayed.
- 4.6 In addition, the Principal agrees that the Contractor may re-format or make such minor alterations to Advertisement Copy as may in the Contractor's reasonable opinion be necessary in order for the Contractor to comply with the Landlord's requirements or to ensure compatibility with Sites or in order to accommodate slight variations in inventory requirements of the same Sites.
- 4.7 The Fees include the maintenance of display of Advertisement Copy at Sites in good condition (including where necessary replacing Advertisement Copy) provided that, where the Contractor is not responsible for production of Advertisement Copy, the Contractor has been supplied with any necessary replacement Advertisement Copy requested by the Contractor from time to time in accordance with clause

5.

- 4.8 The Contractor will only provide photographs of displayed Advertisement Copy at Sites (or any other form of posting report) if expressly agreed in the Confirmed Order. To the extent that the Contractor has agreed to provide posting reports, the Contractor will provide the same in the Contractor's customary form (including as to the nature and level of detail of any information included) and within the Contractor's customary timeframe for producing such reports.

#### **5. SUPPLY OF MATERIAL**

- 5.1 In the case of advertisements to be displayed in a traditional (non-digital) format, all Advertisement Copy and Artwork (subject to any other terms in the Confirmed Order) is to be delivered carriage paid and at the Principal's risk, and shall be supplied to the Contractor at the place(s) and within the time specified in the Confirmed Order (and if no time is specified in the Confirmed Order, no later than four (4) weeks prior to the Start Date). Subject to clause 5.3, all Advertisement Copy shall be printed and shall be supplied to the Contractor in accordance with the Production Specifications for the relevant traditional media Sites.
- 5.2 In the case of advertisements to be displayed in a digital format, all Advertisement Copy and Artwork (subject to any other terms in the Confirmed Order) is to be delivered in the specified electronic format and shall be supplied to the Contractor within the time specified in the Confirmed Order (and if no time is specified in the Confirmed Order, no later than four (4) weeks prior to the Start Date) by the specified delivery method. Subject to clause 5.3, all Advertisement Copy shall be supplied to the Contractor in accordance with the Production Specifications for the relevant digital media Sites.
- 5.3 If the Confirmed Order provides that the Contractor will undertake Production Services then the Principal shall provide all necessary Artwork and any other information or detail to the Contractor by the Copy Deadline. If the Contractor is providing Design in accordance with clause 6, then the Principal shall provide all necessary Artwork (if any) and any other information or detail to the Contractor not less than two (2) weeks prior to the Copy Deadline (excluding any elements to be created by the Contractor if it is undertaking Design pursuant to clause 6). The Principal will supply any imagery print ready (at least 300 dpi) and any illustrations (including logos) in Vector format.
- 5.4 To the extent that:
  - (a) any Advertisement Copy delivered to the Contractor does not comply with all relevant Production Specifications; or
  - (b) any Advertisement Copy or Artwork is not delivered in the specified electronic format or by the specified delivery method, then the Advertisement Copy or Artwork (as appropriate) will be deemed not to have been delivered in accordance with this clause 5. The Parties acknowledge that an approval or acceptance of Advertisement Copy or Artwork by the Contractor is an affirmation that the Advertisement Copy or Artwork meets the Production Specifications, and not that the Advertisement Copy or Artwork complies with the Advertising Standards or the warranties set out in clause 9.2.
- 5.5 If the Principal fails to deliver Advertisement Copy or Artwork in accordance with this clause 5, the Contractor is not obliged to display the non-compliant or undelivered Advertisement Copy but the Principal shall, nonetheless, be liable to pay the corresponding Fees in full. Upon delivery of the Advertisement Copy or Artwork, the Contractor will use reasonable endeavours to provide the Production Services and/or display the non-compliant or late Advertisement Copy but without any commitment to post such Advertisement Copy within the relevant Posting Period(s) or for the full Display Period and shall not be obliged to provide any posting reports. The Contractor may remove any such Advertisement Copy posted in accordance with the provisions of clause 4.1.
- 5.6 Any part delivery of the Advertisement Copy or Artwork, delivery in the incorrect format, or delivery not meeting the Production Specification or any of the provisions of this clause 5 shall be deemed to be no delivery for the purposes of this clause.

- 5.7 Delivery of Advertisement Copy shall be deemed not to have been made until the relevant posting instructions (if any) for that Advertisement Copy, together with the campaign reference number, have been given to the Contractor. If Advertisement Copy is delivered to the premises of the Contractor without a campaign reference number noted on the delivery, then delivery will be deemed not to have been made.
- 5.8 Where the Contractor is not undertaking Production Services, the Principal shall supply the Contractor with an adequate amount of Advertisement Copy to complete the initial display plus an adequate number of spares. The minimum requirements for spare posters are stated on the Production Specifications or the bus despatch details (as appropriate) provided by the Contractor.
- 5.9 The Principal shall ensure that all Advertisement Copy and Artwork complies with the Acceptance Policy and the Copy Guidelines. The Contractor will not be obliged to display, and may remove or discontinue the display of, Advertisement Copy which does not comply with the Acceptance Policy or the Copy Guidelines. If the Contractor does not display the Advertisement Copy because it does not comply with the Acceptance Policy or the Copy Guidelines, the Principal will be obliged to pay any Fees in respect of any period during which the Advertisement Copy was not displayed except where:
- the Principal is able to demonstrate to the Contractor's reasonable satisfaction that the Principal provided the Advertisement Copy and Artwork in good faith and at the time of providing the Advertisement Copy and Artwork (as applicable) the Principal was not aware that it did not comply;
  - the Advertisement Copy and Artwork does not breach any of the warranties in clause 9.2; and
  - the Principal has not breached any other obligations of this Agreement.
- 6. DESIGN**
- 6.1 If specified in the Confirmed Order and provided that Artwork is supplied to the Contractor in accordance with clause 5, the Contractor will undertake Design on the terms of this clause 6. The Contractor warrants that it will undertake the Design using reasonable skill and care.
- 6.2 The Principal hereby grants the Contractor a non-exclusive licence of all Intellectual Property Rights in and to the Artwork reasonably required by the Contractor to design Advertisement Copy and to perform its other obligations in the Agreement without infringing any third party's rights. Without prejudice to clause 9.2, the Principal warrants to the Contractor as a condition of the Agreement that the Principal has the right, capacity, power and authority to give the licence contained in this clause 6.2. The Principal shall indemnify and keep indemnified the Contractor in relation to any losses, damages, costs, expenses (including legal fees and costs) incurred by the Contractor in connection with a claim by a third party that the use of the Artwork as contemplated by this Agreement infringes that third party's rights.
- 6.3 Following receipt of the Artwork in accordance with clause 5, the Contractor will provide the Principal with an electronic copy of the draft Advertisement Copy ("**Draft Copy**").
- 6.4 Upon receipt of the Draft Copy, the Principal shall promptly (and, in any case, in no more than three (3) Working Days) accept or reject the Draft Copy by notice in writing to the Contractor. Subject to clause 6.6, where the Principal rejects any Draft Copy (or revised Draft Copy), the Contractor will endeavour to produce revised Draft Copy for approval by the Principal, and upon receipt of any such revised Draft Copy, the Principal shall within one (1) Working Day accept or reject the revised Draft Copy by notice in writing to the Contractor. The Principal undertakes to provide the Contractor with such information as the Contractor may reasonably request to facilitate the performance by the Contractor of its obligations in this clause 6.
- 6.5 Where Design is included or otherwise stated to be free of charge in respect of any booking, the Principal shall be entitled to the initial Draft Copy and no more than three (3) revised drafts of the same (provided that the Contractor has complied with the warranty set out in clause 6.1).
- All further Design work undertaken by the Contractor shall be charged to the Principal at the Contractor's standard rate of £150 for each subsequent revised draft.
- 6.6 The Contractor shall be under no obligation to provide revised Draft Copy to the extent that the Draft Copy or any revised Draft Copy provided by the Contractor acting in good faith has not been approved by the Principal by the date which is three (3) Working Days before the Copy Deadline for the relevant advertising campaign.
- 6.7 To the extent that:
- the Artwork is not provided in accordance with clause 5; or
  - by the date which is at least three (3) Working Days before the Copy Deadline, the Principal has not approved the Draft Copy or any revised Draft Copy in accordance with clause 6.4, then the Principal shall be deemed to have cancelled the relevant advertising campaign and the Principal shall pay the Fee for the relevant campaign in full. The Principal acknowledges that time is of the essence in the production and posting of Advertisement Copy and that this provision is no more than what is required to ensure that Advertisement Copy is ready for display in good time.
- 6.8 Any Draft Copy approved by the Principal shall be Advertisement Copy for the purposes of the Agreement. For the avoidance of doubt, the Contractor shall be under no obligation to display any Draft Copy which the Principal has not approved in writing in accordance with this clause 6.
- 6.9 Any Intellectual Property Rights in Advertisement Copy created by the Contractor for the Principal shall belong to the Contractor. The Contractor may grant the Principal a non-exclusive licence to use the Contractor's rights in the Advertisement Copy in consideration of a licence fee to be agreed between the Parties. For the avoidance of doubt, this licence fee does not relate to any third party Intellectual Property Rights in the Advertisement Copy or any Intellectual Property Rights in Advertisement Copy created by the Principal. To the extent that the Contractor has licensed in third party Intellectual Property Rights for the purpose of creating and displaying the Advertisement Copy (for instance, stock library images), the Principal would need to license these directly from the relevant third party(s).
- 7. PRINTING**
- If specified in the Confirmed Order, and provided that Artwork is supplied to the Contractor in accordance with clause 5, the Contractor will procure Printing. The Contractor warrants that it will procure Printing using reasonable skill and care.
- 8. CHARGES**
- 8.1 In consideration for the display of Advertisement Copy, the Principal will pay the Fee to the Contractor on the Due Date, plus the additional transaction charge (if any) calculated in accordance with clause 8.5. Payment terms shall be as specified by the Contractor in the Confirmed Order.
- 8.2 If Fees are not paid by the Due Date the Contractor may, without prejudice to any other remedy it may have and without prejudice to the Principal's obligation to pay the Fees, refuse to display any Advertisement Copy or withdraw Advertisement Copy then on display.
- 8.3 Original invoices shall be sent to:
- the Principal; or
  - where an Order has been submitted by an Agent in compliance with clause 2.4, to the Agent (or to such person as the Agent may nominate in the relevant Order, with copy invoices to the Agent), and any such invoice shall clearly identify the Principal for whom the Agent is acting, provided always that appointment of the Agent (and submission of the invoice to the Agent rather than the Principal) will not affect the Principal's obligation to pay Fees on the Due Date.
- 8.4 The Contractor may for any reason (including without limitation as a result of a failure by the Principal to pay any fees which are due to the

Contractor under any agreement) by notice in writing to the Principal require that:

- (a) any future Orders placed by or on behalf of such Principal; and
- (b) any Orders already placed but in respect of which at least fifteen (15) Working Days remain from the date of the notice to the Start Date (both dates inclusive), are paid at least ten (10) Working Days prior to the Start Date (or such longer time as the Contractor in its absolute discretion may determine), and any payment terms so notified shall replace the payment terms set out in the Confirmed Order.
- 8.5 To the extent that any of the Fees are paid with or through American Express, the Principal agrees to pay the Contractor an additional transaction charge of three percent (3%) of the total Fee paid using American Express (or such other charge as the Contractor may notify to the Principal prior to payment being made). Such additional transaction charge will be payable notwithstanding that the Contractor does not provide the Principal with an invoice for the same prior to payment and shall be paid at the same time as such Fees.
- 8.6 In respect of any Fees not received by the Contractor by the Due Date ("Unpaid Fees"), the Principal will pay the Contractor: (i) interest at a rate of eight percent (8%) above the Bank of England base rate from time to time; and (ii) the sum of £40 if the Unpaid Fees are less than £1,000, the sum of £70 if the Unpaid Fees are £1,000 or more but less than £10,000, and the sum of £100 if the Unpaid Fees are £10,000 or more. In addition, the Principal agrees that the Contractor shall be entitled at its discretion to engage a third party to take any action which the Contractor shall reasonably require in order to ensure that the Unpaid Fees are paid, and the Principal agrees to indemnify and keep indemnified the Contractor for all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Contractor or any third party appointed by or on behalf of the Contractor in connection with the enforcement of the Principal's payment obligations under the Agreement.
- 8.7 The Contractor shall be entitled but not obliged at any time or times without notice to the Principal to set off any liability of the Principal to the Contractor against any liability of the Contractor to the Principal (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated, whether or not arising under this Agreement, and irrespective of the currency of its denomination) and may for such purpose convert or exchange any relevant currency at a reasonable rate determined by the Contractor. Any exercise by the Contractor of its rights under this clause shall be without prejudice to any other rights or remedies available to the Contractor. The Principal shall not be entitled to, and shall not, set off any liability of the Contractor to the Principal against any liability of the Principal to the Contractor (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated, whether or not arising under this Agreement, and irrespective of the currency of its denomination).
- 8.8 All sums payable under or pursuant to this Agreement are exclusive of VAT (except where expressly indicated otherwise). Accordingly, the payer of any such sum shall, subject to the presentation of a valid VAT invoice, pay such VAT being properly chargeable in addition to the sum otherwise due.
- 9. WARRANTIES AND INDEMNITY**
- 9.1 The Contractor accepts, subject to the Principal's compliance with its obligations under this Agreement, full responsibility for compliance with statutory and other legal requirements so far as concerns the maintenance of Sites and the right to use them for displaying advertising.
- 9.2 The Principal warrants and undertakes that (including where the Contractor is responsible for design and production of Advertisement Copy):
- (a) all Advertisement Copy will comply with the Advertising Standards, the Copy Guidelines and any restrictions imposed by the Landlord relating to the relevant Sites made known to the Principal by the Contractor prior to the delivery of such Advertisement Copy;
- (b) it will be responsible for obtaining and paying for all necessary licences and consents for the posting and/or displaying and/or reproduction of any Artwork or Advertisement Copy or copyright material contained in or the appearance of any person in its Artwork or Advertisement Copy;
- (c) neither the Artwork nor the Advertisement Copy nor any part of either will infringe the copyright or other Intellectual Property Rights of, or defame, any person;
- (d) no Artwork or Advertisement Copy will contain any worm, virus, Trojan horse or other harmful content and will not enable unauthorised access to the Digital Advertisement System; and
- (e) it maintains adequate virus protection and security measures to protect its IT systems and any Artwork or Advertisement Copy provided or to be provided to the Contractor,
- provided that, if the Contractor is responsible for Design, the Principal will not be responsible for any infringement of any third party rights in any design that was added by the Contractor unless the Contractor indicates at the time of providing the Draft Copy that it has not procured the relevant rights.
- 9.3 The Principal will indemnify, and keep indemnified, the Contractor (in respect of itself and its employees, directors, subcontractors and agents) against all actions, proceedings, costs, damages, expenses, penalties, claims, demands and liability (including legal fees) incurred and arising from any breach by the Principal of the above warranties or any other term of the Agreement.
- 9.4 The Contractor shall have the right to refuse to display or to continue to display any Advertisement Copy which does not, or which in the Contractor's reasonable opinion may not, comply in all respects with the Principal's warranties and undertakings detailed in clause 9.2 above or otherwise where the Principal has not complied with the terms of this Agreement. In such event the Contractor shall not be liable to the Principal for any damage loss or expense whatsoever and in addition to any remedy and/or damages and/or loss that may be claimed by the Contractor against the Principal, the Fees corresponding to display of such Advertisement Copy will be due in full notwithstanding that the Advertisement Copy has not been displayed.
- 9.5 Save as expressly set out in this Agreement, the Contractor excludes all warranties or conditions, whether express or implied by statute or otherwise, to the fullest extent permitted by law.
- 10. LIABILITY**
- 10.1 The Contractor shall not be liable for any damage to any Advertisement Copy or incorrect or non-display of any Advertisement Copy or non-illumination of a display or faulty moving displays if the defect is remedied within seven (7) Working Days after receipt of notification. To the extent that the Principal is responsible for the production of Advertisement Copy and the Contractor does not have sufficient replacement Advertisement Copy in stock to remedy the defects, this deadline will be extended until the date which is seven (7) Working Days after such stock is made available to the Contractor.
- 10.2 The Parties acknowledge that, in circumstances in which the Contractor no longer has any obligation to display Advertisement Copy (whether or not this is as a result of a breach by the Principal of the terms of this Agreement) it is reasonable for the Fee (or the relevant part of the Fee) to be payable as set out in this Agreement given the Contractor's administrative costs, cost of sales and design, the difficulty of filling relevant Sites with alternative advertising in short timescales, and the impracticality of calculating how much revenue is earned from any alternative advertising that may be displayed at the relevant Sites.
- 10.3 For the avoidance of doubt the Contractor shall have no obligation to, and consequently no liability in respect of a failure to, display the agreed value of Advertisement Copy to the extent clauses 5.5, 5.9, 9.4, 11.2 or 20 (or any other clauses of the Agreement which permit the Contractor not to display Advertisement Copy) apply, save as expressly set out in such clauses.
- 10.4 The Contractor's liability to the Principal for a failure to display, as

required by the Agreement, the agreed value of Advertisement Copy on any day(s) during the Display Period of the relevant advertising campaign will be limited to an amount calculated in accordance with the following formula:

Limit for the relevant day = Per Day Fee x (1 – (Value Displayed / Agreed Value))

where:

"Agreed Value" means the agreed value of Advertisement Copy for the relevant day, as determined in accordance with clause 4.2;

"Per Day Fee" means the Fee payable for the relevant day (which will, unless a per day Fee is expressly set out in the Confirmed Order, be calculated as the total Fee payable divided by the number of days in the Display Period);

"Value Displayed" means the value of Advertisement Copy actually displayed on the relevant day, as calculated in accordance with clause 4.3.

For example, if on any day during the Display Period, the Per Day Fee is £10,000 and the Agreed Value is £9,500, but the Contractor only displays Advertisement Copy with a value of £2,375, the limit on liability for that day will be £7,500 (i.e., £10,000 x (1 – (£2,375/£9,500))).

- 10.5 The Contractor may elect to satisfy any liability to the Principal by providing an Overshow of Advertisement Copy of equal value to such liability or, if agreed between the Parties, the display of different Advertisement Copy (including new Artwork). Such Overshow shall be determined by the Contractor and may take place during or after the Display Period and may involve the display of additional Advertisement Copy (including new artwork) at substitute Sites and/or at additional Sites. Any such remedy will constitute a good discharge of the Contractor's liability.
- 10.6 The Contractor's liability in connection with this Agreement (whether in contract (by way of indemnity or otherwise), tort (including negligence), misrepresentation, breach of statutory duty, restitution or otherwise) shall in no event exceed the amount of the Fees payable under the Agreement.
- 10.7 The Contractor shall not be liable to the Principal for:
- any loss of business, loss of goodwill, loss of sales or loss of profit, including in each case any such loss arising in relation to third party contracts and in each case regardless of whether such loss is direct or indirect; or
  - any special, indirect or consequential loss or damage howsoever caused, in each case whether or not the Contractor has been advised of the possibility of such loss.
- 10.8 Each claim, including any purely contingent claim, arising as a result of the breach by the Contractor of its obligations under this Agreement ("Claim") shall be submitted (or in the case of any contingent claim, provisionally notified) to the Contractor in writing within forty-five (45) days following the end of the period of display of the relevant Advertisement Copy with sufficient information to enable the Contractor to consider the Claim. The Contractor shall have no liability in respect of any Claim submitted or notified after that date.
- 10.9 Nothing in this clause 10, or anywhere else in this Agreement, is intended to exclude or restrict a Party's remedies for any fraud by the other Party or exclude or restrict any other rights, obligations or liability to the extent that they cannot by law be excluded or restricted.
- 10.10 Each provision in this clause 10 will be interpreted as being without prejudice to each other provision.

## **11. FORCE MAJEURE**

- 11.1 The due performance of any Agreement is subject to suspension by the Contractor (in whole or in part) owing to Force Majeure. The Principal will remain obliged to pay the Fees notwithstanding any Force Majeure. For the first three (3) consecutive days of any Force Majeure the

Contractor will have no liability for failure to display the Advertisement Copy, regardless of how long the Force Majeure ultimately lasts. If the Force Majeure continues for more than three (3) days the Contractor will be liable to the Principal for the failure to display after such three (3) day period, and the liability for each day following such three (3) day period will be calculated and discharged in accordance with clauses 10.4 and 10.5, meaning that the Contractor may satisfy its liability by (at its election) providing an Overshow or by paying the appropriate amount to the Principal. Otherwise the Contractor will not have any other liability as a result of a suspension caused by a Force Majeure. If the Force Majeure continues for more than ten (10) consecutive days, either Party may terminate this Agreement in whole or in respect of all Sites that continue to be affected by the Force Majeure (e.g. it may terminate the Agreement only in respect of all Sites that have been specifically affected by the Force Majeure without terminating it for Sites that are not affected by the Force Majeure), provided that if one Party has served a notice to terminate for the part affected by the Force Majeure, the other Party may not subsequently serve a notice to terminate the Agreement in whole.

- 11.2 The Principal acknowledges that notwithstanding any sequence or proportion stated in the Confirmed Order, the display of Advertisement Copy on certain digital Sites (including cross-track projection (XTP/DX3) on the London Underground) is subject to interruption or obstruction. The Confirmed Order and the definition of Display Period shall be interpreted accordingly. In addition, the Principal acknowledges that the display of Advertisement Copy on Sites generally may be subject to interruption or obstruction as a result of unplanned or emergency works of the Landlord. If such interruption or obstruction continues for a period of more than five (5) days, the Contractor:
- may (at its sole discretion) terminate its obligation to display the affected Advertisement Copy; and
  - shall, whether or not it terminates its obligation to display the affected Advertisement Copy, either (at its sole discretion): (i) refund the pro-rated part of the Fee that relates to the affected duration, excluding the period of five (5) days, of the Display Period for the affected Advertisement Copy; or (ii) provide an Overshow to the Principal with an equivalent value to the value of the affected duration, excluding the period of five (5) days, of the Display Period for the affected Advertisement Copy.
- 11.3 Other than as set out in clause 11.1 and clause 11.2 the Contractor shall not be liable for loss of or damage to or any adverse impact on the display of any Advertisement Copy as a result of any Force Majeure.
- 11.4 The Contractor will not be liable to the Principal for any vandalism. While the Contractor will use reasonable endeavours to repair vandalised Advertisement Copy where possible, the Principal shall be liable for the supply (or cost of supply) of any replacement Advertisement Copy, except where the Contractor is responsible for production of Advertisement Copy.

## **12. CANCELLATION AND TERMINATION**

- 12.1 The Principal may cancel an advertising campaign under the Agreement by giving notice in writing to the Contractor before the relevant Start Date, in which case the cancellation will be on the following basis:
- in respect of a campaign for the display of Special Advertisements, only on the basis that the Principal shall pay the Fee in full; and

(b) in respect of a campaign other than for the display of Special Advertisements:

- (i) provided that notice of cancellation is duly given at least ninety (90) days before the Start Date for the relevant campaign : without payment of the Fee relating to the relevant campaign;
- (ii) provided that notice of cancellation is duly given less than ninety (90) days but at least seventy-five (75) days before the Start Date for the relevant campaign : on payment of a cancellation charge equal to: (1) fifteen percent (15%) of the Fee; plus (2) payment of all production fees (where costs have been incurred by the Contractor);
- (iii) provided that notice of cancellation is duly given less than seventy-five (75) days but at least sixty (60) days before the Start Date for the relevant campaign : on payment of a cancellation charge equal to (1) thirty percent (30%) of the Fee; plus (2) payment of all production fees (where costs have been incurred by the Contractor);
- (iv) provided that notice of cancellation is duly given less than sixty (60) days but at least forty-two (42) days before the Start Date for the relevant campaign : on payment of a cancellation charge equal to (1) forty percent (40%) of the Fee; plus (2) payment of all production fees (where costs have been incurred by the Contractor); and
- (v) if notice of cancellation is duly given less than forty-two (42) days before the Start Date for the relevant campaign : only on the basis that the Principal shall pay the Fee in full.

12.2 The Principal may cancel an advertising campaign under the Agreement by giving written notice to the Contractor on or after the relevant Start Date, but if it does so it must pay the Fee for such campaign in full unless otherwise agreed in writing by the Principal.

12.3 Where the Principal has cancelled a campaign or been deemed to have cancelled a campaign (whether under clause 12.1, clause 12.2 or otherwise), the Contractor shall be entitled to sell the Sites relating to the cancelled campaigns to third parties irrespective of whether the Principal has complied with the payment obligations for cancellation.

12.4 Cancellation under clause 12.1 or clause 12.2 may only relate to a whole, not part, of an advertising campaign. References to the Fee under clause 12.1 and clause 12.2 mean the Fee before any Rebates have been applied and, where a Confirmed Order covers more than one advertising campaign, that part of the Fee that relates to the cancelled advertising campaign. For the avoidance of doubt a cancellation under clause 12.1 and clause 12.2 does not constitute a breach of this Agreement by the Principal, although a failure to pay the relevant cancellation charge will constitute a breach of this Agreement by the Principal that gives rise to a debt claim which can be brought by the Contractor against the Principal.

12.5 The Contractor may terminate the Agreement forthwith by notice in writing to the Principal if:

- (a) the Principal shall become bankrupt or commit an act of bankruptcy or make any assignment for the benefit of his creditors or enter into any arrangement with his creditors or, being a body corporate, shall become insolvent or if any petition for the winding up or administration of the Principal is presented or if any other step is taken for the purposes of the appointment of an administrator or an administrative receiver of the company or if any steps are taken or negotiations commenced by the company or by any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the Principal and its creditors (or any equivalent step is taken in any jurisdiction);

(b) the Principal ceases or in the Contractor's reasonable opinion threatens to cease to carry on business;

(c) if any monies to be paid by the Principal to the Contractor shall be in arrears for twenty-one (21) days;

(d) if there has been a breach by the Principal of any terms of the Agreement; or

(e) the circumstances described in clause 20 apply.

12.6 In the event the Contractor agrees with the Principal to any amendment of the terms of the Agreement (whether regarding the Sites or the Posting Period relating to any advertising campaign or otherwise) then the Principal will pay to Contractor an administration fee of two hundred and fifty pounds (£250).

### **13. RIGHTS IN AND USE OF THE INTERACTIVE DATA**

13.1 The Principal acknowledges that all Intellectual Property Rights in the Interactive Data shall on creation belong to the Contractor to the fullest extent permitted by law. To the extent that these rights do not vest in the Contractor automatically, the Principal shall hold them on trust for the Contractor and shall, at its own cost, perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution and delivery of) all further documents, required by law or which the Contractor reasonably requests, to vest in the Contractor the full benefit of the right, title and interest assigned to the Contractor under this Agreement.

13.2 The Contractor hereby licences the Intellectual Property Rights in the Interactive data to the Principal to use for its internal business purposes only. The Principal must not license the use of such data to any third party. Such data will be the Contractor's Confidential Information for the purposes of clause 27.

13.3 To the extent that the Contractor is not in possession of the Interactive Data on termination of this Agreement, the Principal shall supply all Interactive Data to the Contractor in any format reasonably requested by the Contractor.

### **14. CONSEQUENCES OF TERMINATION**

14.1 Following termination of the Agreement or cancellation of an advertising campaign the Principal will pay to the Contractor forthwith all outstanding Fees plus interest pursuant to clause 8.6 (pro-rated over the period from the date the amounts became due and payable until the date such amounts were received by the Contractor), plus any other amount payable under this Agreement.

14.2 Any termination of the Agreement and payment of Fees due shall be without prejudice to any other right of action or remedy which the Contractor may have under this Agreement or at law.

14.3 In the event of termination under clauses 12.5(a) or 12.5(b) the Contractor may continue to display any Advertisement Copy and may enter into any agreements with third parties as the Contractor considers appropriate to secure payment for continuing such display.

14.4 In the event of termination, non-display, removal or discontinuance, or any suspension, variation or cancellation by the Contractor in accordance with clause 20, the Contractor 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 display is discontinued together with any other Fees due and owing by the Principal to the Contractor. The Contractor shall not be liable to pay any damages losses or expenses to the Principal as a result or in respect of such termination, non-display, removal or discontinuance, or any suspension, variation or cancellation of advertising.

### **15. HEADINGS**

The headings are for reference only and do not form part of these Terms and Conditions.

### **16. VALIDITY**

If any provision of these Terms and Conditions or the Agreement is held by any court or other competent authority to be void or unenforceable

in whole or part, the other provision of these Terms and Conditions and/or the Agreement and the remainder of the affected provisions shall continue to be valid.

**17. SURPLUS MATERIAL**

17.1 If any Advertisement Copy in the Contractor's possession is not collected by or on behalf of the Principal within ten (10) days from the end of the Removal Period for the relevant advertising campaign then the same shall become the Contractor's property and be disposed of in such manner as the Contractor shall in its absolute discretion decide.

17.2 Any digital copies of Artwork or Advertisement Copy relating to a Confirmed Order in the Contractor's possession will be kept on file for not less than two years (or such longer period as may be required by law) unless instructed by the Principal to be deleted, after which time such copy shall be disposed of in such manner as the Contractor shall decide. The Principal hereby grants the Contractor a revocable non-exclusive licence of the Principal's Intellectual Property Rights in such Artwork and Advertisement Copy for the purpose of giving effect to this clause.

**18. NOTICES**

18.1 All notices under the Agreement must be given in writing, in English and be delivered by courier, recorded delivery, facsimile or email to the address of the other Party set out on the Confirmed Order or to the most recent address, e-mail address, or facsimile number as may have been subsequently notified to the other Party in writing.

18.2 A notice shall be deemed to have been duly given:

- (a) if delivered by courier, at the time of delivery;
- (b) if sent by recorded delivery, forty-eight (48) hours after posting if the recipient of the notice is within the UK or five (5) days if the recipient of the notice is outside the UK; and
- (c) if sent by facsimile or email, upon transmission to the correct address, provided that for any notice to terminate this Agreement, or to threaten or issue legal proceedings in connection with it, such notice is confirmed within forty-eight (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 Working Day, that notice will instead be deemed to be duly given on the next Working Day.

18.3 Notices to the Contractor must be made out to the attention of the Customer Service Department and the General Counsel.

**19. TRANSFER**

19.1 Except as provided herein, the Principal shall not assign, transfer, charge or part with all or any of its rights and/or obligations under the Agreement without the Contractor's prior written consent.

19.2 The Contractor shall be entitled at any time to novate, assign, sub-contract or otherwise transfer to any person any of its rights or obligations under the Agreement without the consent of the Principal. In respect of any novation, the Principal shall, at the Contractor's request and expense, cooperate with the Contractor to procure the novation on such terms as the Contractor may reasonably require and shall execute such documentation and take such other action as the Contractor may request in relation to such novation.

**20. REMOVAL FOR PURPOSES OF LANDLORD'S UNDERTAKING**

If the Landlord at any time in its absolute discretion rejects any Advertisement Copy or requires the display of Advertisement Copy at his property to be removed, interrupted, discontinued, suspended, varied or cancelled then the Contractor may reject, remove, interrupt, discontinue, suspend, vary or cancel such display of Advertisement Copy without prior notice to the Principal and upon any such action of the Landlord the Contractor may terminate the Agreement whether wholly or in part notwithstanding anything therein contained. In the event of such termination, the Contractor's liability is limited as outlined in clause

14.4.

**21. RENEWABLE CAMPAIGNS**

Advertising campaigns in a Confirmed Order that are sold as "renewable" may be renewed by the Principal by giving written notice to the Contractor's Sales Administration Customer Services Department at least twelve (12) weeks prior to the End Date for the relevant campaign. On receiving notice of a renewal, the Contractor will use reasonable endeavours to offer sufficient Sites so that the Principal may book the same numbers and types of Sites, and for the same duration, as the Principal booked for the relevant campaign in the original Confirmed Order. However, any renewal is strictly subject to the Contractor and the Principal agreeing the commercial terms of the renewal campaign (including any amendments the Contractor may require to the financial terms) and entering into a new agreement for the same. The renewal will only become binding on the Contractor once a valid Order has been received by the Contractor and the Contractor has confirmed the same by way of a Confirmation of Order pursuant to the process set out in clause 2. To the extent that the parties have not entered into a binding agreement relating to the renewal campaign at least eight (8) weeks prior to the End Date for the relevant campaign, the Principal will be deemed to have withdrawn its notice of renewal and the Contractor shall be under no obligation to reserve any Sites for the Principal for such renewal campaign.

**22. ORDER OF PRECEDENCE**

In the event of any conflict between (i) the Terms and Conditions and (ii) a Confirmed Order, the provisions in the Confirmed Order shall prevail.

**23. JURISDICTION AND GOVERNING LAW**

The Agreement, and all contractual and non-contractual matters connected with it, shall be governed by and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.

**24. AGENCY, PARTNERSHIP**

The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

**25. ENTIRE AGREEMENT**

25.1 The Confirmed Order and these Terms and Conditions together set out the full extent of the Contractor's obligations and liabilities in respect of the display of Advertisement Copy and the provision of the Production Services and supersede any and all obligations, liabilities or offers of the Contractor set out in prior quotes, representations, statements, negotiations, proposals, options, agreements, arrangements, understandings and undertakings between the Parties relating to the same subject matter.

25.2 The Contractor shall have no liability to the Principal in respect of any discrepancy between the terms of this Agreement (including these Terms and Conditions) and any statement made to the Principal or the Agent on which the Principal relied in entering into the Agreement (unless such untrue statement was made in the knowledge that it was untrue). Accordingly, any condition, warranty or other term concerning the display or failure to display Advertisement Copy or the provision or failure to provide the Production Services which might but for this clause 25.2 be implied into or incorporated into the Agreement or any collateral contract (including the implied terms of satisfactory quality and fitness for purpose), whether by statute, common law or otherwise is hereby excluded.

25.3 The Parties hereby acknowledge that no reliance is placed on any representation made but not embodied in the Confirmed Order or the Terms and Conditions.

25.4 Nothing in this clause 25 is intended to exclude or restrict a Party's



remedies for any fraud by the other Party or exclude or restrict any other rights, obligations or liability to the extent that they cannot by law be excluded or restricted.

**26. WAIVER**

No delay, neglect or forbearance on the part of either Party in enforcing against the other Party any term or condition of the Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that Party under the Agreement. Except as expressly set out in these Terms and Conditions, no right, power or remedy in the Agreement conferred upon or reserved for either Party is exclusive of any other right, power or remedy available to that Party.

**27. CONFIDENTIALITY**

Each Party will maintain the confidentiality of the other Party's Confidential Information (and the Principal shall procure that the Agent maintains the confidentiality of the Contractor's Confidential Information) and shall not, without the prior written consent of the

other, use, disclose, copy or modify the other Party's Confidential Information other than as necessary for the performance of its rights and obligations under the Agreement. "**Confidential Information**" shall mean, in relation to the other Party, information (whether in oral, written or electronic form) belonging or relating to that Party, its business affairs or activities which is not in the public domain and which: (i) is marked as confidential or proprietary; (ii) the receiving Party is advised is of a confidential nature; or (iii) due to its character or nature, a reasonable person in a similar position under similar circumstances would treat as confidential. The Contractor's Confidential Information includes without limitation the Fees payable under the Agreement and other campaign details such as the number and location of the selected Sites.

**28. THIRD PARTY RIGHTS**

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.

**ANNEX**

**Site Types, Posting Periods and Removal Periods**

**N.B. Posting Periods and Removal Periods for long-term displays may differ from the timings set out below – details are available upon request from Contractor.**

**1. TRADITIONAL SITES – GREAT BRITAIN**

**(a) London Underground and London Rail – Tube Car Panels ("TCPs")**

Site Types

TCPs, including Waterloo & City Line TCPs. This shall include options for whole carriage – TCPs or whole train TCPs.

Posting Period

Posting of new Advertisement Copy begins on the Wednesday night prior to the Start Date. While new Advertisement Copy is being posted to the TCP expired Advertisement Copy will be being removed.

Posting of new Advertisement Copy can take up to eight (8) days, finishing on the Wednesday night (or early morning of the Thursday) after the Start Date.

Removal Period

Advertisement Copy on TCPs begins to be taken down on the Wednesday night prior to the End Date, and will continue to be taken down until the Wednesday night (or early morning of the Thursday) after the End Date.

**(b) London Underground and London Rail - other Site Types**

Site Types

12 Sheets, 16 Sheets, 4 Sheets, 48 Sheets, 6 Sheets Illuminated, 96 Sheets, Bank Globe, Bond Street Exit Domination, Camden Crossways, Camden Crossways Plus, Canary Wharf (JLE), Domination, Charing Cross Domination, Digi Walls, DLR Station Domination, Earls Court Domination, Escalator Frieze, Escalator Silver Centres, Illuminated Gallery, Illuminated Landmark, Impact Travelators, Kings Cross Domination, Knightsbridge Domination, Leicester Square Domination, Leicester Square Hub, Liverpool Street Domination, London Bridge Corridor Wrap, London Bridge Domination, Long Postings, Mega Digi Escalator, Mega Escalator, Megawall, North Greenwich Domination, Odd Sized Panel, Oxford Circus 5 Ways, Oxford Circus Entry Domination, Paddington Domination, Shepherds Bush Domination, Showcase Squares, South Kensington Domination, Stair Lift & Escalators, Stair Risers, Stratford (LUL) Domination, Ticket Gateways, Tottenham Ct. Rd. Domination, UG Station Domination, Waterloo Domination, Whole Escalator Run, Whole Platform, Wonderwall.

Posting Period

Posting of new Advertisement Copy begins on the Tuesday night prior to the Start Date. While new Advertisement Copy is being posted, expired Advertisement Copy or blank Advertisement Copy will be being removed.

Posting of new Advertisement Copy can take up to nine (9) days, finishing on the Wednesday night (or early morning of the Thursday) after the Start Date.

Removal Period

Advertisement Copy begins to be taken down on the Tuesday night prior to the End Date, and will continue to be taken down until the Wednesday night (or early morning of the Thursday) after the End Date.

**(c) Bus**

Site Types

Single Deck Sides - 7 Foot, Single Deck Sides - 8 Foot, Bus & Tram Passenger Panels, Double Fronts & Backs (Pairs), Heritage Bus, LED Superside, Lower Rears, Mega Rears, Mega Sides, Mega Rear Gold, StreetLiners, Super Headliners, Super Squares, Supersides, Tram Interiors, Tramliners, T-Sides, Upper Rears, XL Passenger Panels.

Posting Period

Posting of new Advertisement Copy begins on the Sunday night prior to the

Start Date. While new Advertisement Copy is being posted, expired Advertisement Copy will be being removed.

If the site is framed, posting of new Advertisement Copy can take up to four (4) days, finishing on the Wednesday night (or early morning of the Thursday) after the Start Date. If the Advertisement Copy being posted is not framed, posting of new Advertisement Copy can take up to six (6) days, finishing on the Friday night (or early morning of the Saturday) after the Start Date.

Removal Period

Advertisement Copy in framed posters will begin to be taken down on the Sunday night (the End Date) and will continue to be taken down until the Wednesday night (or early morning of the Thursday) after the End Date.

Advertisement Copy in unframed posters begin to be taken down on the Sunday night (the End Date), and will continue to be taken down until the Friday night (or early morning of the Saturday) after the End Date.

**(d) National Rail**

Site Types

12 Sheets - NR, 16 Sheets - NR, 4 Sheets - NR, 48 Sheets - NR, 6 Sheets - NR, 96 Sheets - NR, Carriage Cards - T&W Metro, Landmark - NR, Lift & Escalators - NR, Metrolink Vinyls, Passenger Panels - T&W Metro, Car Vinyls - T&W Metro, Metrolink - Metroliners, Metrolink 40" x 30" Portrait, Metrolink Tram Passenger Panel, Odd Size NR, Stair Risers - NR, Ticket Gates - NR, Train Passenger Panels - NR.

Posting Period

Posting of new Advertisement Copy begins on the Thursday prior to the Start Date. While new Advertisement Copy is being posted, expired Advertisement Copy will be being removed.

Posting of new Advertisement Copy can take up to six (6) days, finishing on the Tuesday after the Start Date.

Removal Period

Advertisement Copy begins to be taken down on the Thursday prior to the End Date, and will continue to be taken down until the Tuesday after the End Date.

**2. TRADITIONAL SITES – NORTHERN IRELAND**

**(a) Northern Ireland retail 6 sheets**

Site Types

6 sheets, Illuminated 6 sheets, Scrolling 6 sheets, Storepoints.

Posting Period

Posting of new Advertisement Copy begins on the Monday (the Start Date) and finishes on the Wednesday after the Start Date. While new Advertisement Copy is being posted, expired Advertisement Copy or blank Advertisement Copy will be being removed.

Removal Period

Advertisement Copy begins to be taken down on the Monday after the End Date, and will continue to be taken down until the Wednesday after the End Date.

**(b) Northern Ireland retail trolleys**

Site Types

Tesco trolley handles.

Posting Period

Posting of new Advertisement Copy begins on the Sunday morning prior to the Start Date and finishes on the Wednesday after the Start Date. While

new Advertisement Copy is being posted, expired Advertisement Copy or blank Advertisement Copy will be being removed.

Removal Period

Advertisement Copy will begin to be taken down on the Sunday morning (the End Date), and will continue to be taken down until the Wednesday after the End Date.

**(c) Roadside 48 sheets**

Site Types

48 sheets.

Posting Period

Posting of new Advertisement Copy begins on the Monday (the Start Date) and finishes on the Wednesday after the Start Date. While new Advertisement Copy is being posted, expired Advertisement Copy or blank Advertisement Copy will be being removed.

Removal Period

Advertisement Copy will begin to be taken down on the Monday after the End Date, and continue to come down until the Wednesday after the End Date.

**(d) Bus**

Site Types

Single Deck Sides - Lower Rears, Mega Rears, Super Rears, StreetLiners, Super Squares, Supersides, T-Sides, Commuter Cards, XL Passenger Panels, Back of Driver panels.

Posting Period

Posting of new Advertisement Copy begins on the Sunday night prior to the Start Date. While new Advertisement Copy is being posted, expired Advertisement Copy will be being removed.

Posting of new Advertisement Copy finishes on the Wednesday night after the Start Date.

Removal Period

Advertisement Copy in framed posters will begin to be taken down on the Sunday night (the End Date), and continue to come down until the Wednesday night after the End Date.

**3. DIGITAL SITES – GREAT BRITAIN**

**(a) Digital sites: all Site Types**

Advertisement Copy is uploaded for the Display Period (e.g. for 10 seconds in each loop for such Site during the hours of display agreed for each Site Type).

**(b) Digital sites: London Underground**

Site Types

All London Underground digital formats (including DEPs, LCDs, XTP and DX3).

Loop durations as at 1 June 2015 (subject to change):

- DEPs: 90 seconds
- LCDs: 30 seconds
- XTP/DX3: 120 seconds

Packages (hours of display)

*Monday – Friday*

Morning Commuter:	6am-10am.
Daytime Consumer:	10am-4pm.
Evening Consumer:	4pm-7pm.
Entertainer:	7pm-midnight.

*Saturday/Sunday*

Weekend Consumer:	6am-5pm.
Weekend Entertainer:	5pm-midnight.

*Friday/Saturday – Night Tube only\**

Night Tube:	midnight-6am
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*\*Note that Night Tube hours only apply on certain lines (e.g. Jubilee, Victoria, and parts of the Piccadilly, Central and Northern Lines).*

**(c) Digital sites: Westfield**

Site Types

LCDs & LEDs.

Loop durations as at 1 June 2015 (subject to change):

- LCDs: 60 seconds
- LEDs:
  - Centre Spectacular (WFL) 120 seconds
  - Entrance Landmark (WFL) 40 seconds
  - Atrium Landmark (WFL) 60 seconds
  - Meridian Square (WFS) 40 seconds
  - North Star (WFS) 40 seconds
  - Stratford Skyline (WFS) 40 seconds
  - Four Dials (WFS) 120 seconds

Packages (hours of display)

Monday-Sunday:	8am-midnight.
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**(d) Digital sites: One New Change and London Designer Outlet**

Site Types

LCDs.

Loop durations as at 1 June 2015 (subject to change):

- LCDs: 60 seconds

Packages (hours of display)

Monday-Sunday:	8am-midnight.
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**(e) Digital sites: Other Sites in England, Wales and Scotland**

As agreed with the Principal.

**4. OTHER SITE TYPES**

Any other Site Type set out in the Confirmed Order (an "Other Site Type").

The Posting Period and Removal Period for an Other Site Type will be as set out in the Confirmed Order or, if not set out in the Confirmed Order, the Posting Period and Removal Period set out above for the Site Type that is most similar to the Other Site Type (and the Principal may request the Contractor at any time to confirm what the Posting Period and the Removal Period are).